

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

RICKY A. SHAW, : CASE NO.
Plaintiff : 1:09-CV-00359
vs. :
CUMBERLAND TRUCK :
EQUIPMENT COMPANY, : Harrisburg, PA
Defendant : 16 May 2011
.....: 9:30 a.m.

TRANSCRIPT OF CIVIL JURY TRIAL, DAY 1
BEFORE THE HONORABLE CHRISTOPHER C. CONNER
UNITED STATES DISTRICT JUDGE

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I N D E X
 Ricky Shaw vs. Cumberland Truck Equipment Co.
 1:09-CV-00359
 Civil Jury Trial, Day 1
 16 May 2011

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P R O C E E D I N G S

(Civil jury selection from 9:30 to 10:40 a.m.)

THE COURT: Is counsel satisfied with jury selection and prepared to proceed with trial?

MR. CROCENZI: Yes, Your Honor.

MS. SALTZ: The defense is, Your Honor.

THE COURT: Very good. Ms. McKinney, would you swear in the jury?

(The jury was sworn at 10:41 a.m.)

THE COURT: Ladies and gentlemen, for those of you who were not selected, please again thank you for your participation in today's voir dire process. I would ask you at this time to return to the seventh floor. Please make sure you bring with you all of your belongings, and thank you for your participation. You will receive further instructions on the seventh floor.

(Brief pause.)

THE COURT: Counsel, I have some preliminary instructions that I will give to the jury. Then we will take a break and start with opening statements.

MR. CROCENZI: Thank you.

MS. SALTZ: Thank you, Your Honor.

1 THE COURT: Ladies and gentlemen, you have
2 now been sworn in as the jury in this case, and
3 before we begin the trial itself I have some
4 preliminary instructions about these proceedings
5 and about your conduct and duties as jurors.
6 The case will proceed as follows. First each
7 side may make opening statements. What is said
8 in opening statements is not evidence but is
9 simply an outline to help you understand what
10 each party expects the evidence to show.

11 A party is not required to make an opening
12 statements. After the opening statements
13 counsel for Mr. Shaw will present evidence in
14 support of Mr. Shaw's claims, and counsel for
15 Cumberland Truck Equipment Company may cross
16 examine the witnesses presented by Mr. Shaw.
17 At the conclusion of Mr. Shaw's case counsel for
18 Cumberland Truck Equipment Company may introduce
19 its evidence and counsel for Mr. Shaw may cross
20 examine witnesses that are introduced by
21 Cumberland Truck Equipment Company. The parties
22 in this case may present the testimony of a
23 witness by reading from their deposition
24 transcript.

25 A deposition is the sworn testimony of a

1 witness taken before trial, and it is entitled
2 to the same consideration as if the witness had
3 testified at trial. After all of the evidence
4 is presented counsel may make closing arguments
5 explaining what they believe the evidence has
6 shown. What is said in closing arguments is not
7 evidence.

8 Finally, I'll instruct you on the law that
9 you are to apply in reaching your verdict and
10 you will then decide the case. By your verdict
11 you will decide disputed issues of fact. I will
12 decide all questions of the law that arise
13 during the course of the trial. Before you
14 begin your deliberations at the close of the
15 case I will instruct you in more detail on the
16 law that you must follow and apply. It will be
17 your duty to find from the evidence what the
18 facts are. You and you alone will be the judges
19 of the facts. You will then have to apply those
20 facts to the law as the court will give it to
21 you, and you must follow that law whether you
22 agree with it or not.

23 The evidence from which you will find the
24 facts will consist of the testimony of the
25 witnesses, the documents and other things

1 received into the record as exhibits, and any
2 facts that the lawyers agree to, or stipulate
3 to, or that the court may instruct you to find.
4 When I said admitted into evidence or received
5 into evidence, I mean that the particular
6 statement or exhibit may be considered by you in
7 making the decisions that you must make at the
8 end of the case.

9 When I have sustained an objection I am
10 excluding that evidence from this trial for a
11 good reason. When you hear that I have
12 overruled an objection I am permitting that
13 evidence to be admitted. If you are instructed
14 that some item of evidence is received only for
15 a limited purpose, you must follow that
16 instruction. Certain things are not evidence
17 and must not be considered by you. First,
18 statements, arguments, and questions by lawyers
19 are not evidence. Second, objections to
20 questions are not evidence. Third, testimony
21 that the court has excluded or told you to
22 disregard is not evidence and must not be
23 considered. Fourth, anything that you may have
24 seen or heard outside the courtroom is not
25 evidence and must be disregarded. You are to

1 decide the case solely on the evidence presented
2 here in the courtroom.

3 Because you will be asked to decide the
4 facts of this case you should give careful
5 attention to the testimony and evidence as it is
6 being presented. At the end of the trial you
7 will have to make your decision based on what
8 you recall of the evidence. If you are unable
9 to hear a witness or a lawyer, please raise your
10 hand immediately and I will see that this is
11 corrected. If you wish, you may take notes
12 during the presentation of the evidence, the
13 summations of the attorneys, and at the
14 conclusion of evidence and during my
15 instructions to you on the law.

16 My courtroom deputy will arrange for pens,
17 pencils, and paper, and remember that your notes
18 are for your own personal use. They are not to
19 be given or read to anyone else. As you can see
20 we have a court reporter here who will be
21 transcribing the testimony during the course of
22 the trial, but you will not have a written
23 transcript to consult during your deliberations.
24 Therefore please pay close attention to the
25 testimony as it is given. You should not

1 consider your notes that you or your fellow
2 jurors may take as some sort of written
3 transcript. Instead, as you listen to the
4 testimony keep in mind that you will be relying
5 on your recollection of that testimony during
6 your deliberations.

7 There are some other specific points to
8 keep in mind about note taking. First, note
9 taking is permitted, not required. Each of you
10 may take notes, but no one is required to take
11 notes. Second, be brief. Do not try to
12 summarize all the testimony. Notes are for the
13 purpose of refreshing your memory. They are
14 particularly helpful when dealing with
15 measurements, times, distances, identities, and
16 relationships. Overuse of note taking may be
17 distracting. You must determine the credibility
18 of witnesses, so you must observe the demeanor
19 and appearance of each person on the witness
20 stand. Note taking must not distract you from
21 that task.

22 If you wish to make a note, you need not
23 sacrifice the opportunity to make important
24 observation. You may make your note after
25 having made an observation. Also, do not use

1 your notes or any other jurors' notes as
2 authority to persuade fellow jurors in your
3 deliberations. Give no more or less weight to
4 the views of the fellow juror because that juror
5 did or did not take note. Your notes are not
6 official transcripts.

7 They are not evidence and they are by no
8 means a complete outline of the proceedings or a
9 list of the highlights in the trial. They are
10 valuable, if at all, only as a way to refresh
11 your memory. Your memory is what you should be
12 relying on when it comes time to deliberate and
13 render your verdict in this case. You therefore
14 are not to use your notes as authority to
15 persuade fellow jurors of what the evidence was
16 during the trial. Notes are not to be use in
17 place of the evidence.

18 Fourth, and finally, do not take your notes
19 away from court. When the court is in recess
20 for a break or for lunch, take your notes with
21 you to the jury room. If you leave the
22 building your notes must remain in the jury
23 room, and at the end of each day my courtroom
24 deputy will secure your notes overnight and
25 return them to you the following morning. When

1 this case ends after you have had an opportunity
2 to use your notes during the course of
3 deliberations a court officer will collect and
4 destroy them to protect the secrecy and
5 integrity of your deliberations.

6 Ladies and gentlemen, it will be up to you
7 to decide which witnesses to believe, which
8 witnesses not to believe, and how much of any
9 witness's testimony to accept or to reject. I
10 will instruct you at the end of the trial about
11 determining the credibility or the believability
12 of the witnesses. During the trial please keep
13 an open mind, and you should not form or express
14 any opinion about the case until you have heard
15 all of the testimony and all of the evidence,
16 the closing arguments, and my instructions to
17 you on the law. From time to time during the
18 course of the trial I may make rulings on
19 objections or motions. Lawyers have a duty to
20 object when the other side offers testimony or
21 evidence that the lawyer believes is not
22 admissible at trial.

23 You should not be unfair or partial against
24 a lawyer or the lawyer's client because the
25 lawyer has made objections. If I sustain or

1 uphold an objection to a question that goes
2 unanswered by the witness, you should not draw
3 any inferences or conclusions from the question
4 itself. You should not infer or conclude from
5 any ruling or other comment that I may make that
6 I have any opinions on the merits of this case
7 favoring one side or the other. I do not favor
8 one side or the other.

9 Nothing that the court may say or do during
10 the course of the trial is intended to indicate
11 or should be taken by you as indicating what
12 your verdict should be. During the trial it may
13 be necessary for me to speak with counsel out of
14 your hearing either by having a conference at
15 the bench while you're present in the courtroom
16 or by calling a recess. The purpose of these
17 conferences is to decide how certain evidence is
18 to be treated under the rules of evidence and to
19 avoid confusion and error. We will do our best
20 to keep the number and length of these
21 conferences to a minimum, but my main point in
22 raising this is there may be some need for
23 flexibility on your part so that we can address
24 these evidentiary issues. If we do ask you, if
25 we do take a recess and ask you to wait in the

1 jury deliberation room, please keep in mind that
2 we are in the courtroom working while you are
3 not here and we're doing our level best to move
4 this case forward as expeditiously as possible
5 within the confines of the rules of evidence.

6 Finally, to ensure fairness you as jurors
7 must obey the following rules. First, do not
8 talk among yourselves about this case or about
9 anyone involved in it until the end of the case
10 when you go into the jury room to decide on your
11 verdict. Second, do not talk with anyone else
12 about this case or about anyone involved in it
13 until the trial has ended and you have been
14 discharged as jurors. Anyone else includes
15 members of your family and your friends. You
16 may tell people that you are a juror, but do not
17 tell them anything else about the case, and you
18 can tell them that you have a very strict
19 presiding judge who requires you to obey that
20 order, and this is a fairly new instruction, but
21 you may also not communicate about this case via
22 the internet, you may not blog or tweet about
23 the case or events surrounding the case or your
24 jury service.

25 Do not send an e-mail to anyone conveying

1 your jury experience or information about this
2 case, and do not use Facebook or other social
3 networking websites to discuss your jury service
4 or issues involved in this case, and I can
5 assure you that if you do, the attorneys will
6 find out about it and then I'll find out about
7 it. If anyone should try to talk to you about
8 the case please bring it to my attention
9 promptly.

10 Third, during the trial you should not
11 speak to any of the parties, lawyers, or
12 witnesses involved in this case about any
13 subject. You should not even pass the time of
14 day with them. Any contact between you and an
15 individual associated with a party in this case
16 may be interpreted, rightly or wrongly, as
17 reflecting an improper prejudice against the
18 other side, and you must take care to avoid
19 this. Please keep in mind that the individuals
20 associated with this case, including the
21 parties, witnesses, and lawyers are subject to
22 the same rules. So when you see them at a
23 recess or pass them in the hallway or outside
24 the courthouse and they do not speak to you,
25 they are not being rude or unfriendly. They are

1 simply following my instructions.

2 Fourth, do not listen to any news stories
3 or articles about this case or anyone involved
4 in it. Fifth, do not undertake any research or
5 make any investigation about this case on your
6 own. This includes research via the internet.
7 Many of you have cell phones, blackberries, or
8 other handheld devices that may allow you to
9 access websites, including Google. You may not
10 use these devices or websites to do your own
11 research about matters discussed in court, and
12 the purpose of this instruction is not to
13 withhold any information from you.

14 There are many rules that govern what
15 evidence the parties may present to you, and
16 you must decide this case based solely on the
17 evidence that those rule allow you to hear. So
18 to reiterate, do not perform any research on
19 your own, including research from online
20 sources. Finally, do not form any opinion until
21 all of the evidence is in. Do not allow
22 sympathy or prejudice to influence you. The law
23 demands that you consider all of the evidence
24 presented and that you render solely on the
25 basis of that evidence a just verdict according

1 to the instructions that I give you. Keep an
2 open mind until you start your deliberations at
3 the end of the case.

4 This is a civil case. Mr. Shaw is the
5 party who brought this lawsuit. Cumberland
6 Truck Equipment Company is the party against
7 whom the lawsuit has been filed. Mr. Shaw has
8 the burden of proving his case by what is called
9 the preponderance of the evidence. That means
10 that Mr. Shaw must prove to you in light of all
11 of the evidence that what he claims is more
12 likely so than not so. To say it differently,
13 if you were to put the evidence favorable to
14 Mr. Shaw and the evidence favorable to
15 Cumberland Truck Equipment Company on opposite
16 sides of the scales of justice, Mr. Shaw would
17 have to make the scales tip somewhat on his
18 side. If Mr. Shaw fails to meet this burden the
19 verdict must be for Cumberland Truck Equipment
20 Company.

21 You may have heard the term beyond a
22 reasonable doubt. That is a stricter burden of
23 proof that applies to criminal cases. It does
24 not apply in civil cases such as this, so you
25 should put it out of your mind. In this case

1 Mr. Shaw claims that Cumberland Truck Equipment
2 Company discriminated against him on the basis
3 of a perceived disability, failed to accommodate
4 that disability that it perceived him as having,
5 and retaliated against him for requesting
6 accommodation.

7 Cumberland Truck Equipment Company denies
8 Mr. Shaw's allegations. I will give you
9 detailed instructions on the law at the end of
10 the case. For now just keep in mind that at the
11 end of the trial you will be asked to resolve
12 whether Cumberland Truck Equipment Company
13 engaged in action that was adverse to Mr. Shaw
14 as a result of perceived disability or as an act
15 of retaliation for Mr. Shaw's request for
16 accommodation. The trial will begin immediately
17 after our break, and as I said I anticipate that
18 it will last three to four days. I want to
19 before excusing you for a brief break give you
20 some idea of our schedule. We will return with
21 opening statements by the parties, and then I
22 assume we will be taking a lunch break. Our
23 lunch break will be taken at approximately 12:15
24 for about an hour, and we'll do that each day.

25 we will take a 15-minute break in the

1 morning and a 15-minute break in the afternoon.
2 The morning break will be at approximately
3 10:30. The afternoon break will be at
4 approximately 2:30 or 3:00. We'll conclude each
5 day at approximately 5:00, and that depends on
6 where we are with a particular witness. If we
7 finish a witness at 4:45 we may not put another
8 witness on the witness stand depending upon the
9 anticipated length of that particular
10 individual's testimony.

11 Tomorrow we will be starting at 9:00 a.m.,
12 and every day thereafter we will be starting at
13 9:00 a.m. So please try to arrive in the jury
14 deliberation room at approximately 8:45 and give
15 yourself some time for to deal with traffic
16 situations, and I recognize that some of you are
17 traveling from some distance and we very much
18 appreciate that, and if you run into an unusual
19 circumstance, please don't speed, drive safely,
20 and we'll wait for you, believe me, if we need
21 to. So that is our anticipated schedule. That
22 will give you an opportunity to contact any
23 family members either during this break coming
24 up or over the lunch hour or when you arrive at
25 home at the end of today's proceedings and give

1 them some idea as to what they can anticipate in
2 terms of your absence from home or from
3 employment.

4 At this time we'll take a 15-minute break.
5 We'll return at 11:20 for opening statements of
6 the parties. Ms. McKinney, at this time you may
7 escort the jury. Ladies and gentlemen, please
8 make sure that you have all your belongings in
9 the courtroom, and Ms. McKinney will take you to
10 your new sort of home base for the next several
11 days. Ms. McKinney, please escort the jury. We
12 are in recess until 11:20. Counsel, please
13 stay.

14 (Jury recessed at 11:01 a.m.)

15 THE COURT: Counsel, I just wanted to ask if
16 you have any demonstrative exhibits for purposes
17 of your opening statements, have you had an
18 opportunity to exchange them with each other or
19 view them, and are there any issues with respect
20 to the demonstrative exhibits?

21 MR. CROCENZI: The one I want to show the
22 jury is Mr. Shaw's last performance evaluation.
23 Defense counsel, she didn't seem to have any
24 objection to that.

25 THE COURT: All right.

1 MR. CROCENZI: Also I just was reminded that
2 I will be referencing page 22 of Tim Kline's
3 deposition transcript. If you recall Mr. Kline
4 passed away --

5 THE COURT: Is deceased.

6 MR. CROCENZI: -- and we will be reading his
7 transcript. There are portions that we have not
8 been able to agree on and we need a ruling on
9 some objections by defense counsel, but that
10 page is not part of that problem.

11 THE COURT: All right, understood, and
12 Ms. Saltz?

13 MS. SALTZ: I guess I'm a little confused.
14 That's not part of the opening then, that page?

15 THE COURT: That page is, but the pages that
16 involve instructions, involve disputes are not
17 part of the opening.

18 MS. SALTZ: I would have an objection to
19 actually reading from the transcript until the
20 transcript has been introduced into evidence and
21 the jury has heard it. I have no problem with
22 referencing what the information is contained in
23 it, but I do have an action to actually reading
24 from the dependent transcript in the opening.

25 THE COURT: All right. I don't see any

1 problem with it. I'm going to allow it, given
2 the fact that this particular page of the
3 transcript is not subject to an objection. So I
4 will allow it. And, Ms. Saltz, do you have any
5 exhibits that you intend to use during the
6 course of your openings?

7 MS. SALTZ: No Your Honor.

8 THE COURT: All right. Very good. We're in
9 recess until 11:20. Oh, counsel? No more than
10 45 minutes for an opening.

11 MR. CROCENZI: Oh, my. That's not going to
12 be a problem.

13 MS. SALTZ: That won't be a problem. Thank
14 you, Your Honor.

15 (Recess taken from 11:03 to 11:25 a.m.)

16 THE COURT: Please be seated. Ladies and
17 gentlemen, as I indicated to you before our
18 recess now is the time for opening statements of
19 the parties. The party who bears the burden of
20 proof in this case, the plaintiff, will proceed
21 first, and therefore the court will turn to
22 Mr. Crocenzi and invite him to address the jury.
23 Mr. Crocenzi, you may now address the jury.

24 MR. CROCENZI: Thank you, Your Honor. May
25 it please the court, counsel, ladies and

1 gentlemen of the jury. Good morning. This case
2 is about a guy who was a hardworking, valuable
3 employee until his employer, without any warning
4 to him, told him to go home and shut him out of
5 work. This guy liked to work, he wanted to
6 work, he was able to work until his employer's
7 false fears ended it all. This case is about our
8 guy Mr. Shaw and how his employer, Cumberland
9 Truck Equipment Company, violated the Americans
10 with Disabilities act and shut him out of work.

11 It's February 2007, and Ricky is a
12 warehouse worker at Cumberland Truck's location
13 in Carlisle. Cumberland Truck sells truck
14 parts. Ricky works in what is called warehouse
15 B, because there are two warehouses at the
16 Carlisle location. Ricky had been working as a
17 warehouse worker at Carlisle for approximately
18 six and a half years. Ricky's primary job is to
19 take incoming products and put it in the right
20 place in the warehouse and keep the warehouse
21 organized. He's on the forklift about half the
22 day.

23 Now, Ricky's knees are not normal. He has
24 arthritis, but the arthritis doesn't prevent him
25 from working full-time. He adapts, he climbs

1 stairs more cautiously, he uses the cane in the
2 morning to help him get around. You will hear
3 that his supervisors thought he was doing a good
4 job, they were giving him good performance
5 evaluations, and nobody had an issue with
6 Ricky's job productivity. That is until one
7 member of the Cumberland Truck management team
8 incorrectly assumed that Ricky was a danger to
9 himself and others in the work place.

10 You will meet Charles Hoffman, who is the
11 director of parts operations at Cumberland Truck
12 and a member of that Cumberland Truck management
13 team. Mr. Hoffman oversees the warehouse
14 operations at Cumberland Truck. Mr. Hoffman
15 doesn't work in the warehouse. He works in an
16 office across the parking lot from the
17 warehouse. In January, February of 2007
18 Mr. Hoffman sees Ricky walking across the
19 parking lot from Warehouse B to the office,
20 and Mr. Hoffman forms an impression that Ricky
21 is struggling to make it across.

22 He also then forms an impression that Ricky
23 cannot do his job as a warehouse worker and is a
24 danger to himself and others in the warehouse.
25 Now, Judge Conner at the end of this case will

1 give you certain instructions about the law, and
2 one of those instructions will be that the
3 Americans with Disabilities Act, what we call
4 the ADA, makes it illegal for an employer to
5 prevent an employee from working based on that
6 employer's false fears or perceptions that an
7 employee has substantial difficulty performing
8 a major life activity like walking or working.
9 We believe we will prove during this trial that
10 Cumberland Truck had false fears, false
11 impressions about Ricky's ability to walk and
12 work.

13 So what did Mr. Hoffman and the Cumberland
14 Truck management team do? You will hear
15 testimony from Mr. Hoffman that he then went to
16 go see Bryan Sheldon, who is the corporate
17 controller for Cumberland Truck and also
18 oversees the human resources department at the
19 company. Mr. Sheldon, without even talking to
20 Ricky about his ability to do this job in the
21 warehouse, just sends, agrees to send him, makes
22 a decision to send him for a physical
23 examination at Concentra Medical Center in
24 Mechanicsburg. That's where Cumberland Truck
25 sends its employees for pre-employment

1 physicals.

2 So on February 26th, 2007 Ricky shows up
3 for work at Warehouse B just like any other day
4 and plans to put in a full day, just like he has
5 been for the last six and a half years. When he
6 arrives at work he is greeted by Brenda Hoffman.
7 Brenda Hoffman is the director of human
8 resources at the company and she reports
9 directly to Bryan Sheldon. She tells Ricky that
10 he needs to go for a physical examination at
11 Concentra immediately. Ricky thinks this is a
12 strange request, because nobody at Cumberland
13 Truck has told him that he is having difficulty
14 doing his job and Ricky doesn't think he is
15 having any problems doing his job.

16 well, like a good employee he goes, he
17 takes a form with him that Brenda Hoffman gave
18 him, and he shows up at the Mechanicsburg
19 Concentra location. Now, at Concentra he is
20 examined by a physician's assistant. The
21 physician's assistant goes over some of the job
22 duties with Ricky and then performs a short
23 physical examination of Ricky.

24 Ricky takes a form with him back to
25 Cumberland Truck and when he arrives he's

1 promptly greeted by Brenda Hoffman. She tells
2 him that in Cumberland Truck's opinion that he
3 has failed the physical, that he is no longer
4 able to work, and that he needs to go home and
5 apply for short term disability benefits. Ricky
6 is shocked. He cannot believe that he failed a
7 physical examination for a job he has been
8 performing for so long and so well according to
9 his supervisors.

10 At the end of this case Judge Conner will
11 also instruct you that Ricky has the burden of
12 proof that he was able to do the essential
13 functions of his job with or without an
14 accommodation. So we're going to take a close
15 look at what information Cumberland Truck
16 provided to Concentra Medical Center in February
17 of 2007, and we're also going to take a closer
18 look at what happened during the physical exam
19 in February and two other examinations that
20 occurred in April of 2007 and September of 2007.

21 Throughout this trial there will, you're
22 going to see evidence like this, a job analysis
23 or a job description, and this is the form that
24 Cumberland Truck provided to Concentra for them
25 to review with Ricky when they sent him there on

1 February 26th, 2007. We believe we will prove
2 that this job analysis is inaccurate. It did
3 not match all of the job duties and the actual
4 job duties that Ricky was performing on a
5 day-to-day basis. You will hear testimony that
6 this job analysis was developed by a few members
7 of the Cumberland Truck management team. They
8 did not ask Ricky for any input. They did not
9 ask any warehouse worker for input. They did
10 not even ask the supervisor of the warehouse for
11 any input in developing this form, and this is
12 the only information that Cumberland Truck
13 provided to the medical providers at Concentra.
14 We believe that this is frankly bogus and
15 doesn't match anything that Ricky did at the job
16 in an accurate fashion.

17 So what else happened at these Concentra
18 exams? We will prove that Cumberland Truck
19 didn't provide any type of weights or
20 representative materials to Concentra so they
21 could have Ricky lift them. He didn't lift
22 anything during that exam. He didn't carry
23 anything during that examination. The
24 physicians at Cumberland Truck -- or Concentra
25 didn't send him for what's called a functional

1 capacity evaluation to measure his physical
2 capabilities. Again they were only looking at a
3 job analysis form that we believe does not
4 accurately and does not match Ricky's actual job
5 duties on a day-to-day basis. We're also going
6 to show you this exhibit during this trial. I
7 should have moved that before I put it on. All
8 right. There we go, sorry about that. This is
9 Ricky's last performance evaluation. Mr. Kline,
10 who was Ricky's direct supervisor in the
11 warehouse, completed and reviewed the
12 application with Ricky on January 10th, 2007.

13 You will see that Mr. Kline gave Ricky good
14 or very good marks in all eleven categories. In
15 the productivity category, which is supposed to
16 evaluate an employee's volume of work
17 efficiently in a specified period of time,
18 Mr. Kline says, "Gets done what he physically
19 can," but if you notice he puts down a score of
20 79, which is at the top end of the good
21 category, and there is nothing in this job
22 performance evaluation which indicates that
23 Ricky is having any physical problems performing
24 his job as a warehouse worker in Warehouse B.

25 Now, tragically Mr. Kline died last year,

1 but before he passed away we were able to take
2 his testimony under oath at a deposition at my
3 office on January 12th, 2010, and we're going to
4 be reading this deposition transcript into the
5 record for you at some point during this trial.
6 So after Brenda Hoffman tells Ricky that he's no
7 longer able to work at Cumberland Truck, that he
8 needs to apply for short term disability
9 benefits, Ricky goes home the next day and takes
10 a look at the paperwork that Mrs. Hoffman gave
11 to him.

12 He thinks about his options, and Ricky is a
13 hard worker. He knows he can do this job just
14 like he has been for the last six and a half
15 years. He declines to take the short term
16 disability benefits. So what does Ricky do?
17 Ricky will tell you that the next day he shows
18 up for work at Warehouse B just like any other
19 day. The guy wants to work. He likes working
20 at Cumberland Truck. He's able to work at
21 Cumberland Truck. He works there for about an
22 hour and a half until the Cumberland Truck
23 management team tells him to go home once again.

24 He hasn't been back to work at Cumberland
25 Truck since. Ricky is very frustrated at this

1 point. He knows he can do this job. He knows
2 that he just needs to get the accurate
3 information to Concentra. So he fires off a
4 letter to Cumberland Truck Equipment Company,
5 and you're going to see a copy of that letter
6 during the course of this trial, and in that
7 letter Ricky tells Cumberland Truck that look,
8 just have this Cumberland Truck job analysis
9 form match my actual job duties. Cumberland
10 Truck refuses to do it. This is what the law
11 calls a request for a reasonable accommodation.
12 Cumberland Truck refuses. They tell him he
13 still needs to apply for that short term
14 disability benefit because that's the only money
15 he's going to get from them. He's not going to
16 be able to earn a paycheck because he's not
17 working.

18 Ricky will tell you that he steadfastly
19 refused to apply for that short term disability
20 benefits for a number of weeks, but by the, by
21 April of 2007 Ricky, without a paycheck, is
22 having his bills pile up on him, and he needs to
23 do something. So Ricky will tell you that he
24 really had no choice at that point because
25 Cumberland Truck was shutting him out, so he

1 applied for the short term disability benefit.
2 He first goes back to Concentra thinking they'll
3 fill out the physician part of the form for him,
4 but they refuse and say no, we're not going to
5 do it. So Ricky will tell you that he went to
6 see his orthopaedic physician, Dr. Oplinger, at
7 Appalachian Orthopaedics. Dr. Oplinger had been
8 treating Ricky for his knee condition for a few
9 months. Ricky sends the form to Dr. Oplinger
10 with a letter explaining his situation and
11 asking Dr. Oplinger, "Can you fill out this form
12 for me? I'd appreciate it."

13 Dr. Oplinger up until this point had not
14 disabled Ricky from work. He had not placed any
15 restrictions on him. But when Dr. Oplinger gets
16 the form, he fills it out for Ricky indicating
17 that Ricky is capable of performing sedentary
18 work or sit down work, and Ricky qualifies and
19 receives the short term disability benefit.
20 Because Ricky is still not permitted to go back
21 to work for Cumberland Truck Ricky decides well,
22 better look for work some place else.

23 So he tries. Applies for a few jobs, he
24 goes back to the employment agencies where he
25 had worked through prior to landing his job at

1 Cumberland Truck. He's not offered any
2 employment. There's nothing available for him,
3 and Ricky will tell you that it's tough for a 55
4 Year Old Army grunt to find a job in this tough
5 economy. The short term disability benefits
6 were going to end in a year. Ricky will testify
7 that toward the end of that year he was once
8 again facing financial distress. So he once
9 again analyzes his options. He had gone to a
10 physical exam at Concentra in April of 2007 and
11 once again in September of 2007, but because
12 Cumberland Truck only said this is what you have
13 to look at, doctors and nothing else, it was a
14 foregone conclusion that Ricky wasn't going to
15 pass that physical and he wasn't going to be
16 permitted to work at Cumberland Truck. They
17 were a foregone conclusion.

18 Ricky decides that he needs to apply for
19 social security disability benefits from the
20 federal government. He completes the
21 application and some questionnaires, submits the
22 claim, and the federal government grants it.
23 Now, Cumberland Truck will argue that when Ricky
24 applied for social security disability that his
25 damages in this case should be cut off at that

1 point because he was, he claims that he was
2 unable to work, but we're going to take a look
3 at the social security disability application
4 and paperwork, and nowhere on there does Ricky
5 say, "I'm totally disabled, I can't work at
6 all," and the judge, Judge Conner will instruct
7 you at the end of the case that Ricky is able to
8 receive social security disability benefits and
9 also recover money in this lawsuit so long as
10 Ricky is able to explain his representations or
11 comments to the social security disability
12 administration.

13 Again we will show that there is no
14 conflict and that Ricky never indicated to them
15 that he was unable to work in any capacity.
16 Ricky served our country faithfully for 21 years
17 as an infantry man in the Army, serving both
18 stateside and overseas. When he retired from
19 the Army he settled in Carlisle. He bounced
20 around for, with a few temporary jobs or through
21 temporary agencies until he landed this job at
22 Cumberland Truck. It was a great fit for Ricky.
23 He was good at it. He liked to work there. He
24 wanted to work there. He was able to work
25 there. He planned to work there until he

1 retired.

2 Ricky hasn't lived an extravagant
3 lifestyle, but he carved out a good life for
4 himself after he retired from the Army, a life
5 that included working at Cumberland Truck, a
6 part of his life at Cumberland Truck snuffed
7 out. My co-counsel Pete Russo, who you met
8 earlier during voir dire, will be back up at the
9 end of this trial during closing arguments and
10 he will ask you to return a verdict for Ricky.
11 Thanks again for your time and your attention.

12 THE COURT: Thank you, Mr. Crocenzi.
13 Ms. Saltz, you may address the jury.

14 MS. SALTZ: Thank you, Your Honor. Ladies
15 and gentlemen, good morning. One thing, counsel
16 don't often agree on many things, that's why
17 we're on opposite ends of this case, but the one
18 thing that Mr. Crocenzi and I will agree on, and
19 that is that Ricky Shaw is a good worker. He's
20 a hard worker. Cumberland liked Ricky Shaw. He
21 was a knowledgeable employee. He did a great
22 job. Also I should take this moment to thank
23 him for the service on behalf of Cumberland and
24 myself that he gave to his country. Honest guy.
25 Hardworking guy. Good guy. Cumberland wanted

1 Ricky Shaw as an employee.

2 In fact, let's take this story back to when
3 Ricky first came to Cumberland and he was
4 offered a job as a warehouse worker. It's a
5 heavy truck parts warehouse, and you're going to
6 hear testimony of what goes on in that
7 warehouse. The carrying, the lifting, the
8 climbing, the bending, the squatting, and when
9 he came to Cumberland his employment was
10 conditioned on a physical, and he took that
11 physical and the physical came back and it
12 showed that he had no depth perception in the
13 left eye and little vision in the left eye.

14 When that information was given to Brenda
15 Hoffman, because his employment was contingent
16 on that physical she said it's not part of the
17 responsibilities or duties, we want to hire this
18 employee, and they hired Ricky Shaw. Soon after
19 Ricky started working in the warehouse he had an
20 accident, a work accident. He had to go out on
21 medical leave. When he returned from medical
22 leave released by the physician the company
23 worked with him to get him to where he needed to
24 be back to full duty again.

25 This is back in about 2000, and Cumberland

1 Truck had benefits that they gave to their
2 employees. They have benefits that are required
3 by law, which is something you may or may not
4 have heard of, the Family Medical Leave Act,
5 which protects the employee's job when they're
6 taking care of someone, a family member that may
7 be ill or having an illness themselves. They
8 also offer their employees disability benefits,
9 again in the event of something happens that
10 they have some sort of income.

11 well, sadly in 2005 Ricky had, his wife was
12 ill and Brenda Hoffman had given him the form
13 for the Family Medical Leave Act in the event he
14 needed to take care of her. So these were not
15 new forms that he had not seen before. This is
16 something the company has offered and has to
17 offer according to law, and also the disability
18 benefits they choose to offer their employees.
19 Ricky Shaw worked in the warehouse, as we said a
20 knowledgeable, hard worker.

21 Never did he tell anyone in 2006, 2007,
22 that he had any kind of medical condition.
23 Never told management that he needed any kind of
24 accommodation. He just kept on doing his job.
25 At certain different points in the very first

1 period at the end of 2006 you will hear from the
2 evidence, and early 2007, he was observed by
3 different managers on different occasions, slow
4 reflexes, looking like he was struggling.
5 Mr. Hoffman we will hear from, his window sits,
6 faces the parking lot, and you have the
7 warehouse to your right about eighty feet
8 distance, and then you have the main building.
9 About half a dozen times he saw Mr. Shaw
10 struggling to walk across eighty feet.

11 It was difficult for him, and that's what
12 he observed. He didn't have any perception, he
13 didn't know anything about his medical
14 condition. In fact, none of the managers did.
15 Ricky never revealed anything about, you know,
16 if he was having an issue with his knees or
17 anything else, asking for any type of
18 accommodation, but he was observed struggling,
19 observed struggling walking across that parking
20 lot.

21 Finally by the sixth time Mr. Hoffman spoke
22 to Mr. Whitmire, who you will hear from, and
23 they went to Mr. Sullivan concerned. Concerned
24 for Mr. Shaw. Now, because usually employees
25 will come and say hey, I'm having a difficulty

1 here, a medical issue or whatever, I need a
2 little accommodation or this is what's going on,
3 but Mr. Shaw never did, and they were confronted
4 with a situation what do we do with an employee
5 that is liked, is respected, is a hard worker,
6 but apparently now just by observation they
7 didn't know anything other than what they saw
8 was struggling to walk across eighty feet of a
9 parking lot, coming into a building and sitting
10 down, sitting on a forklift when asked to get
11 products and saying someone else can get that
12 product.

13 Something was going on here. Well,
14 Cumberland Truck is in the business of heavy
15 truck parts. They're not medical professionals.
16 They didn't know what was happening, but what
17 they had was Mr. Shaw's best interests in mind.
18 They wanted to know is he okay, and also
19 considering the fact that he's dealing with
20 heavy truck parts they had to be concerned about
21 their other employees as well. So not knowing
22 what was going on, only seeing that he was
23 struggling to walk, after advice from counsel,
24 after sitting in meetings and talking and
25 discussing what would be the best thing to do

1 for him, they decided they would let a medical
2 doctor make the determination, and the job
3 description that Mr. Crocenzi talked about has
4 two parts it, as most job descriptions do,
5 especially when you're dealing with warehouse
6 work. You have the written out duties of a job
7 description, and then you have the physical
8 requirements of a job description.

9 Now, there will be testimony from Mr. Shaw
10 that he did not want the physical duties of that
11 job description changed. When he said he wanted
12 that job description to match, he wanted the
13 things that he had become more in terms of doing
14 as far as the product itself, but not the
15 physical. In fact, Mr. Shaw himself will
16 testify that, you know, he was able to pick up
17 140 pounds, 120 pounds. So the job description
18 had a central component to it, and that was
19 based on management who worked in the warehouse
20 knowing what the physical requirements are of
21 that job, and you will hear about them, but it
22 was essentially lifting up to seventy pounds
23 frequently, as with any warehouse, climbing,
24 climbing portable stairs, climbing steps,
25 lifting, bending, squatting, walking, standing,

1 eight hours a day.

2 So they sent Mr. Shaw to Concentra and he
3 was examined by Dr. Walker, who went through the
4 physical requirements of the job description and
5 found that Mr. Shaw at that point, February
6 26th, 2007 was not able to do the essential
7 duties of his job. He couldn't squat,
8 difficulty bending, climbing, he couldn't lift,
9 he couldn't carry, standing, walking. They
10 provided that, Dr. Walker provided that
11 information to Brenda Hoffman, at which point
12 Ms. Hoffman told Mr. Shaw he would have to go
13 out on a medical leave of absence, and that was
14 based on what a medical doctor, after examining
15 him, determined, at which point Mr. Shaw was
16 given the forms for Family Medical Leave Act for
17 disability benefits.

18 These were benefits offered to him by the
19 company. No nobody could force him to take the
20 benefits. It was his choice. They were
21 offered, the paperwork was offered to him. They
22 wanted Mr. Shaw to come back. You will hear,
23 you will see a lot of the information has been
24 documented in letters, both letters that
25 Mr. Shaw wrote to Cumberland and letters that

1 Ms. Hoffman wrote to Mr. Shaw, and in every
2 letter written to Mr. Shaw the company wrote,
3 "When your condition improves, come back."
4 Mr. Shaw's own doctor, Dr. Oplinger, who you
5 will see a video of, we're taking his testimony
6 tomorrow and we'll present it by video, filled
7 out a form in which he said that Mr. Shaw could
8 not stand, could not walk, could not carry,
9 could not lift. All he could do is sit down
10 work. Sedentary. His own doctor.

11 Mr. Shaw went back again for a second
12 independent exam in April. Again that exam
13 came back that he was unable to do the essential
14 duties, official duties of that job. He went
15 back again in September, and again an
16 independent doctor said he just can't do it.
17 He can't stand for more than, you know, five
18 minute intervals, he can't walk, you know, more
19 than thirty minute intervals. These are medical
20 doctors that made this decision.

21 Now, there's also been testimony that
22 Mr. Shaw had an opportunity to have a knee
23 replacement in April of '07 and chose to delay
24 that until '09 that could have brought him back
25 to work sooner. At that point with him having

1 not been fit for duty they, Cumberland, kept his
2 job open. They continued to keep his job open
3 for almost seven months. The other employees in
4 the warehouse worked overtime to meet his duties
5 so that they were hoping that his condition
6 would improve and he could come back to work.
7 Now, Mr. Shaw also did apply for social security
8 benefits, and in that form in his own writing,
9 both handwritten and typewritten, he admitted
10 that he lost his job because of his bad knees
11 and bad back that prevented him from being able
12 to work per OSHA requirements. He knew that.

13 Even in his letter to Cumberland early on
14 was the first time he disclosed what his medical
15 condition was and that he could never pass that
16 physical. Now, as far as accommodation goes,
17 Mr. Shaw met with Mr. Sheldon at one point. The
18 two of them met and they talked, and Mr. Sheldon
19 talked about possibly doing something else other
20 than the warehouse, and Mr. Shaw did not want to
21 hear of this. He wanted his job in the
22 warehouse. That's the job he wanted. That's
23 the job he wanted to go back to, even though the
24 doctors said he couldn't do that job. They
25 talked about the possibility, Mr. Sheldon then

1 offered to him take this job, just take the job
2 description to your doctor, have your doctor
3 tell Dr. Walker pick another doctor to have him
4 examined. He didn't do that. Mr. Shaw didn't
5 go to his doctor, who was an orthopaedic
6 surgeon, and say, "Hey, they're saying I can't
7 do this. What do you think, Dr. Oplinger? Can
8 I do this job?" He didn't come back with that.

9 The reason? Because Dr. Oplinger in April
10 of '07 said he can't do that job. Right now
11 physically he could not meet those requirements.
12 The job was held open for seven months. At the
13 end of that seven months Cumberland at that
14 point terminated Mr. Shaw's employment, and in
15 the letter that they sent him terminating his
16 employment they said to him, "When your
17 condition improves, any time your condition
18 improves, reapply. Come back to us. We want
19 you to come back as an employee," and he never
20 did.

21 Even after Mr. Shaw had knee replacement
22 surgery he never did come back. There was no
23 accommodation other than having other people do
24 Mr. Shaw's job, and he didn't want to do a sit
25 down job. He wanted to just work in the

1 warehouse, but to work in that warehouse based
2 on his not being able to, and you will hear the
3 testimony, to meet those physical requirements,
4 it could have endangered Mr. Shaw and it could
5 have endangered another employee. It was almost
6 a powder keg to be waiting for that moment, and
7 that is what this case is all about, a
8 hardworking employee who management observed,
9 just observed, didn't know what the condition
10 was, having difficulty walking. Sent him for a
11 medical exam to discover that he wasn't fit for
12 duty. Wanted him to come back time, and time
13 and time again and even offered him to come back
14 at any time that his condition improved, and
15 that's the testimony of this case. Thank you.

16 THE COURT: All right. Thank you very much,
17 Ms. Saltz. Ladies and gentlemen, we will take
18 our lunch break at this time. We'll break for
19 an hour and fifteen minutes. Please try to
20 return at approximately ten after 1:00, and
21 we'll reconvene at 1:15 for the first witness in
22 the case. Please recall all of my earlier
23 instructions and refrain from any conversations
24 among yourselves or with anyone else about what
25 you have seen and heard so far. As I said to

1 you earlier you will have that opportunity, but
2 not until the time of final deliberation. We're
3 in lunch recess until 1:15. Ms. McKinney, you
4 may escort the jury.

5 (Lunch recess from 11:58 a.m. to 1:20 p.m.)

6 THE COURT: Please be seated. Mr. Crocenzi,
7 would you call your first witness?

8 MR. CROCENZI: Yes. Charles Hoffman.

9 THE COURT: All right. Mr. Hoffman, please
10 step forward.

11 MR. CROCENZI: Your Honor, I noticed that
12 there are other prospective Cumberland Truck
13 witnesses in the gallery and I would --

14 THE COURT: You request sequestration?

15 MR. CROCENZI: Yes.

16 THE COURT: Yes, Ms. Saltz, if you would
17 please ask the other witnesses to remain seated
18 outside. Thanks very much.

19 (Charles Hoffman was called to testify and
20 was sworn by the courtroom deputy.)

21 COURTROOM DEPUTY: Please be seated and
22 state your full name for the record.

23 THE WITNESS: Charles J. Hoffman.

24 MR. CROCENZI:

25 Q. Good afternoon, Mr. Hoffman.

1 **A.** Hi.

2 MS. SALTZ: Your Honor, may I ask if
3 Mr. Crocenzi could just -- he's right in my line
4 of vision of the witness. Thank you.

5 THE COURT: Ms. Saltz, please feel free to
6 move around the courtroom to the extent you need
7 to.

8 MS. SALTZ: Thank you, Your Honor.

9 **Q.** Mr. Hoffman, are you employed with
10 Cumberland Truck Equipment Company?

11 **A.** Yes.

12 **Q.** How long have you worked for Cumberland
13 Truck?

14 **A.** Ive worked for them two times actually.
15 Since 1998 recently.

16 **Q.** What was your position with the company in
17 2007?

18 **A.** I was director of parts operations.

19 **Q.** How long had you -- or had you held that
20 position by 2007?

21 **A.** How long?

22 **Q.** How long by that point?

23 **A.** Ten years.

24 **Q.** Now, what is the business of Cumberland
25 Truck Equipment Company?

1 **A.** Cumberland Truck is, we're a wholesale
2 distributor of truck parts, you know, the big
3 Class A trucks, and we have ten locations in
4 Pennsylvania and we were a wholesale
5 distributor, so we purchased from the
6 manufacturer and then we distribute that product
7 to garages and fleets and things like that.

8 **Q.** You primarily work at the Carlisle
9 location, is that right?

10 **A.** That's where my office is, yes.

11 **Q.** Was that your home office in 2007?

12 **A.** Yes.

13 **Q.** You directly oversee the warehouse
14 operations for Cumberland Truck, including the
15 warehouses at the Carlisle location?

16 **A.** I'm responsible for all the warehouse
17 operations, yes.

18 **Q.** You do not work in the warehouses, is that
19 correct?

20 **A.** Not on a daily basis, no.

21 **Q.** Now, in your position as director of parts
22 operation you reported directly to the owners of
23 Cumberland Truck, is that correct?

24 **A.** Yes.

25 **Q.** And you had people that reported to you at

1 that time in the organization, is that correct?

2 A. Yes.

3 Q. Did Mr. Kline report directly to you?

4 A. No. He actually reported to Pat Whitmire.

5 Q. What was Mr. Whitmire's position in 2007?

6 A. He was the parts and logistics manager for
7 the Carlisle location, which is one of our ten
8 locations.

9 Q. How many warehouses were there at the
10 Carlisle location in 2007?

11 A. Two.

12 Q. Did you call them Warehouse A and
13 Warehouse B?

14 A. Yes.

15 Q. Warehouse B was the larger of the two
16 warehouses, is that correct?

17 A. Yes.

18 Q. And we've also mentioned Bryan Sheldon
19 earlier during opening statements. Mr. Sheldon
20 is the corporate controller, is that right?

21 A. Yes.

22 Q. He was the corporate controller back in
23 '07, too?

24 A. Yes, did Mr. Sheldon.

25 Q. Did Mr. Sheldon report directly to the

1 owners like yourself?

2 A. Yes.

3 Q. Was there a management team at the Carlisle
4 location which consisted of you, Mr. Sheldon,
5 Mr. Whitmire, and Brenda Hoffman?

6 A. I'm not sure. Not a team there, not in the
7 way that we like meet every week or anything
8 like that, no. That wasn't a team.

9 Q. But those were the management personnel at
10 the Carlisle location?

11 A. Some of the management personnel, yes.

12 Q. Mrs. Hoffman was the director of human
13 resources --

14 A. Yes.

15 Q. -- in '07?

16 A. Yes.

17 Q. Is she related to you at all?

18 A. No. I get that a lot though, right.

19 Q. All right. You're familiar with Ricky
20 Shaw, is that correct?

21 A. Yes.

22 Q. And Ricky Shaw worked in Warehouse B at
23 Carlisle, is that correct?

24 A. That's correct.

25 Q. And by 2007 Ricky had been working at the

1 warehouse for about six, six and a half years,
2 is that right?

3 A. Yes, sounds about right.

4 Q. Mr. Kline worked in the warehouse with
5 Mr. Shaw on a daily basis, is that right?

6 A. Yes.

7 Q. Now, your office was not located in the
8 warehouse, it was on a different part of the
9 property of Carlisle, is that right?

10 A. That's correct, yes. That was in the other
11 building.

12 Q. And there is a parking lot that separated
13 your office from Warehouse B, is that right?

14 A. That's right.

15 Q. Now, isn't it true that you would also
16 visit Warehouse B a couple of times a month, a
17 couple of times a month to check on things or
18 find something?

19 A. More than that, but yes, regularly.

20 THE COURT: I hate to interrupt, but could
21 you maybe give us a handle on where Warehouse A
22 was in relation to your office and Warehouse B,
23 or am I jumping ahead?

24 MR. CROCENZI: No, that's all right. We'll
25 take it here, Your Honor.

1 THE WITNESS: They were right next to each
2 other. Warehouse A had our corporate offices
3 and service department and some other things all
4 in one building, and then there was a sixty or
5 seventy foot long parking lot and then there's
6 another bigger warehouse where Ricky worked. My
7 office was on the same side as Warehouse B, so
8 if I looked out my window I would be looking at
9 the other warehouse. Is that kind of what
10 you're asking for?

11 THE COURT: What I'm wondering is --

12 THE WITNESS: I can draw it for you or
13 something.

14 THE COURT: -- did you work in Warehouse A?

15 THE WITNESS: No, I worked in the corporate
16 office.

17 THE COURT: Which is part of -- but
18 I thought --

19 THE WITNESS: It's in the same building as
20 Warehouse A.

21 THE COURT: Okay. All right.

22 THE WITNESS: Yeah, it's all the same
23 building, yes.

24 THE COURT: That's what I thought. Okay.

25 BY MR. CROCENZI:

1 Q. When you came over to Warehouse B you were
2 only there for short periods of time? Five, ten
3 minutes?

4 A. Yeah, a few minutes at a time.

5 Q. Every time that you came over to Warehouse
6 B you wouldn't see Ricky, right?

7 A. No.

8 Q. There would be times that you would come
9 over and he was doing something and you didn't
10 see him?

11 A. That's true.

12 Q. Okay. I'm going to show you what is marked
13 as Plaintiff's Exhibit 9.

14 (Brief pause.)

15 Q. This is titled "Job Analysis, Cumberland
16 Truck Equipment Company." Do you see that,
17 Mr. Hoffman?

18 A. Yes.

19 Q. And you provided some input for this job
20 analysis form, is that right?

21 A. That's correct.

22 Q. And I believe you had provided information
23 on the tools, equipment utilized for the
24 position of warehouse workers, is that right?

25 A. That's correct.

1 Q. You also provided information regarding the
2 duties block, which is on page 1, is that right?

3 A. Yes.

4 Q. You didn't have any input regarding the
5 physical requirements which are listed at the
6 bottom of page 1 and through page 2, is that
7 right?

8 A. No.

9 Q. No, you didn't have any input or --

10 A. No, I didn't outline this document or
11 anything if that's what you're asking.

12 Q. That's what I'm asking. Regarding the
13 physical requirements.

14 A. No.

15 Q. Okay. When you provided some input on the
16 tools equipment utilized and the duties, did you
17 solicit any input from Ricky Shaw?

18 A. No.

19 Q. I'm going to turn your attention now to
20 January, February 2007. Did you see Ricky
21 walking across that parking lot from Warehouse B
22 to your office building?

23 A. From time to time, yes.

24 Q. You saw him approximately six times, is
25 that right?

1 **A.** well, I saw him many more times than that,
2 but a few times where I noticed that he was
3 taking a long time to come across the parking
4 lot.

5 **Q.** And is it your recollection that Ricky was
6 walking slow and with a limp? Is that what you
7 recall?

8 **A.** He had a limp that I remember, yes, and he
9 was walking slow, yes.

10 **Q.** He wasn't using a cane, was he?

11 **A.** Not that I remember, no.

12 **Q.** And you didn't notice him taking any
13 breaks, did you?

14 **A.** He would stop every once in a while coming
15 across the parking lot.

16 **Q.** It was your impression that he was
17 struggling to make it across, is that right?

18 **A.** Yes.

19 **Q.** Now, after you saw this did you then meet
20 with Pat Whitmire and Bryan Sheldon?

21 **A.** well, not initially I did not. I mean,
22 every once in a while we all have problems, so
23 it's, you know, the first time I saw him I
24 didn't go asking questions.

25 **Q.** Okay, but in February of 2007 did you then

1 meet with Mr. Whitmire and Mr. Sheldon?

2 A. I believe so, yes.

3 Q. Did you express your impression that Ricky
4 was struggling to make it across that parking
5 lot?

6 A. Yes.

7 Q. Didn't you also tell them that you believed
8 Ricky was a danger to himself and others working
9 in the warehouse?

10 A. I didn't say that I believed he was. I
11 said I wanted to make sure that he was not.

12 Q. You had concerns that Ricky didn't have
13 fast reflexes --

14 A. That's correct.

15 Q. -- and therefore wasn't, might be a danger
16 to others or himself in the warehouse, is that
17 right?

18 A. That's correct.

19 Q. Do you remember appearing at my office for
20 your deposition, Mr. Hoffman?

21 A. Yes.

22 Q. And that was held on January 11th, 2010?

23 A. Roughly, yes.

24 Q. At the beginning of the deposition you were
25 asked to give an oath to tell the truth at that

1 deposition, is that right?

2 A. Yes.

3 Q. We were there for about an hour, I was
4 asking you some questions about what you knew
5 about this case?

6 A. Yes.

7 Q. And do you remember me asking you questions
8 that you were concerned whether Ricky was a
9 Danger to himself and others in the warehouse?

10 A. Not specifically.

11 Q. Let me refer you to page 15, line 17, and I
12 asked you this question, "Did you ever make a
13 comment to Mr. Sheldon or Mr. Whitmire that you
14 were concerned that Ricky was a danger to
15 himself or to others in the warehouse?" And
16 you answered, "I believe that I did."

17 A. Okay.

18 Q. So you did believe that Ricky was a danger
19 to himself and others based on your impression
20 of him?

21 A. Well, I guess if that's what I said then I
22 must have said that to you, yes.

23 Q. Did you ever speak with Ricky about your
24 impressions of him?

25 A. Not specifically, no.

1 Q. Did you ever speak with Tim Kline after
2 your meeting with Mr. Whitmire and Mr. Sheldon
3 about your impressions of Ricky Shaw?

4 A. I either did before or after I talked to
5 Pat.

6 Q. Again I'm referencing back to your
7 deposition testimony on January 11th, 2010,
8 and I asked you that same question during that
9 deposition.

10 MS. SALTZ: Objection, Your Honor.

11 MR. CROCENZI: Page 11, line 21.

12 THE COURT: Hold on one second.

13 MS. SALTZ: Your Honor, if counsel is going
14 to be using the deposition, the witness does not
15 have a copy of that deposition to reference what
16 the question and answer is.

17 MR. CROCENZI: I'll be glad to show it to
18 him.

19 THE COURT: All right. Very good.

20 BY MR. CROCENZI:

21 Q. Mr. Hoffman, I'm going to show you page 11
22 from your transcript from your deposition, and
23 I'm referencing line 21.

24 A. Okay.

25 Q. If you could read that?

1 (Brief pause.)

2 A. Okay.

3 Q. Okay?

4 A. Uh-huh.

5 Q. And I asked you, "Did you ever speak with
6 his immediate supervisor Tim Kline about Ricky
7 Shaw taking a long time to walk from the
8 warehouse to the office and back?" And you
9 answered, "No."

10 A. Right.

11 Q. Okay. Mr. Hoffman, there was no incident
12 that happened that was a danger to Ricky or
13 others in the warehouse while he was employed at
14 Cumberland Truck, isn't that true?

15 A. Not that I'm aware of no.

16 Q. Okay. Prior to your meeting with
17 Mr. Whitmire and Mr. Sheldon in February of 2007
18 you had received no complaints from any employee
19 about Ricky's productivity in the warehouse?

20 A. No.

21 Q. And you didn't receive any complaints about
22 him allegedly using a cane to operate a
23 forklift?

24 A. No.

25 Q. Never heard that, is that true? You never

1 heard that?

2 A. No, I never heard that.

3 Q. And you never had any complaints about his
4 productivity?

5 A. No.

6 Q. And prior to this meeting with Whitmire and
7 Sheldon you received no complaints from any
8 employee about Ricky having any difficulty
9 lifting, is that right?

10 A. Not that I recall.

11 Q. Okay, and you never had any complaints
12 about Ricky having difficulty carrying?

13 A. No, not that I recall.

14 Q. Never had any complaints about Ricky having
15 difficulty standing for long periods of time?

16 A. Not that I remember, no.

17 Q. Never received any complaints about Ricky
18 having difficulty bending?

19 A. Not that I remember, no.

20 Q. You didn't have any complaints from any
21 employee about Ricky having difficulty
22 squatting?

23 A. Not that I remember, no.

24 MR. CROCENZI: Thank you. That's all I
25 have.

1 THE COURT: Ms. Saltz?

2 MS. SALTZ: Thank you, Your Honor.

3 (Brief pause.)

4 CROSS EXAMINATION BY MS. SALTZ:

5 Q. Good afternoon, Mr. Hoffman.

6 A. Hello.

7 Q. Mr. Hoffman, would you turn to Exhibit 9?

8 Is that in front of you?

9 A. Yes.

10 Q. Would you take a look at that, please, and
11 counsel was asking questions about this job
12 analysis.

13 A. Yes.

14 Q. Would you take a look at the section marked
15 "Physical Requirements"?

16 A. Okay.

17 Q. And I believe it goes on for two pages.

18 A. Yes.

19 Q. Okay, would you take a look at all those
20 sections, please?

21 A. Okay.

22 Q. Is there anything inaccurate as to what the
23 requirements are of a warehouse worker in terms
24 of the physical requirements?

25 (Brief pause.)

1 MR. CROCENZI: Objection, Your Honor. There
2 hasn't been any foundation laid that Mr. Hoffman
3 knows about the specific requirements of a
4 warehouse worker at Carlisle Warehouse B. He
5 testified he doesn't work in the warehouse. He
6 also testified he didn't have any input in
7 developing that part of the job analysis.

8 THE COURT: All right.

9 Q. I can clarify that, Your Honor.

10 Mr. Hoffman, did you work in the warehouse at
11 any point?

12 A. Oh, yes.

13 Q. How long did you work in the warehouse?

14 A. Well, I've been in the industry since 1976.
15 I've held warehouse puller positions, forklift
16 driver, delivery driver, warehouse manager, just
17 about -- I mean, that's why I'm director of
18 operations. I've done everything in the
19 operations of our kind of business.

20 Q. And was that for Cumberland?

21 A. At sometimes, yes.

22 Q. Could you just describe for the jury what
23 goes on in Warehouse B based on your own
24 experience and knowledge of that job?

25 A. Well, in Warehouse B, and in Warehouse A

1 both, product comes from, again from the
2 manufacturer. We'll get a truckload of brake
3 drums or mixed product, and the warehouse job
4 requires that that product gets unloaded from
5 the truck. Usually it's run down an aisle of
6 the warehouse and the product is checked in and
7 verified that what we got billed for is what we
8 actually received.

9 At that point what we'll do is we'll have
10 designated locations for all that product, and
11 it may go into the other warehouse, it might
12 stay in the warehouse it's received at, which is
13 usually warehouse B, and the product is put away
14 in those locations. From that point forward we
15 get orders from our other branches for that same
16 kind of product and we have to fill those orders
17 for the branches. So sometimes we'll be
18 receiving product and putting it away.
19 Sometimes we'll be pulling product for our other
20 branches or for other customers directly from
21 that branch, and that stuff, that product will
22 then be put on pallets or in crates or bins,
23 depending on what size it is, and then it will
24 be sorted for each particular branch that it's
25 going to that night or the next day or whatever,

1 and then labeled and shipped out.

2 Q. You mentioned brake drums.

3 A. Yes.

4 Q. How much do brake drums weigh
5 approximately?

6 A. Average is 110 pounds.

7 Q. What other kind of product -- I mean, you
8 referred to it as product and for those of us
9 that don't know what the kind of products
10 that --

11 A. Everything from lamps or light bulbs that
12 weigh practically nothing to clutches that weigh
13 two hundred pounds and cylinder heads that weigh
14 three or four hundred pounds.

15 Q. Now, with regard to -- you testified that
16 you did not complete this, you didn't create
17 this job analysis form.

18 A. That's correct.

19 Q. Is it accurate though where it states that
20 lifting is up to seventy pounds frequently?

21 A. Yes.

22 Q. So you would in the course of the day as a
23 warehouse worker you would have to lift about
24 seventy pounds?

25 A. Regularly, yes.

1 Q. What about occasionally up to 150 pounds?

2 A. Yes. Preferably with help, but yes.

3 Q. So there would always be two people that
4 you would prefer having lift --

5 A. Right.

6 Q. Over what weight, sir? What would be like
7 the weight where you would want to see two
8 people lifting?

9 A. Well, any -- any, like a brake drum order,
10 usually what we'll require everyone to do is
11 load it, you don't want to go any more than two
12 or three high because obviously you lift them up
13 high it's pretty tough on you. So if you were
14 doing a clutch or you were doing a lot of brake
15 drums we usually would ask that you get help to
16 do that. A supervisor wouldn't stand over a
17 warehouse worker and make sure that you did
18 that, but it's recommended.

19 Q. And then as far as carrying, you would have
20 to carry that product from one location to
21 another?

22 A. Yeah. Again, you know, if you were pulling
23 a brake drum order for a branch you're going to
24 have to take brake drums off of one pallet, put
25 them on another pallet. If a customer comes in

1 and needs product directly you may have to pick
2 that brake drum up and put it in the back of
3 their pickup truck or something like that.

4 Q. And also the same kind of weight
5 requirement for carrying up to seventy pounds
6 frequently?

7 A. Yes.

8 Q. Occasionally up to 150 pounds?

9 A. Yes.

10 Q. A lot of sitting in that job?

11 A. No.

12 Q. How long are you on your feet usually?

13 A. Oh, pretty much the whole eight hours. I
14 mean, you'll occasionally be on the forklift.
15 Most often you're on a forklift when a truck of,
16 again a truckload of drums or a truckload comes
17 in, one of the warehouse operators will jump on
18 a forklift and unload that truck, and if we're
19 loading a truck for one of our branches the same
20 thing, they'll get on a forklift and they'll
21 load the truck up.

22 Q. Now, is anyone in the warehouse designated
23 as the forklift driver?

24 A. No.

25 Q. So that anybody working in the warehouse,

1 and that's warehouse B, would have to know how
2 to operate a forklift?

3 A. Everyone has to be forklift certified and
4 everyone has to drive forklifts, yes.

5 Q. And approximately what percentage of the
6 time would someone be using a forklift in that
7 warehouse during just a day, an eight hour day?

8 A. Probably 20 percent.

9 Q. And the rest of the time would be walking,
10 standing?

11 A. Yeah, pushing carts or pallet jack or
12 moving stuff up, helping, you know, off of one
13 skid, putting it on another, checking product
14 in, putting, stacking products on a shelf, and
15 just warehouse work.

16 Q. Are there stairs in that warehouse?

17 A. Yes.

18 Q. How many sets of stairs? One? Two?

19 A. Two.

20 Q. Is there also any kind -- when you say, I
21 envision when you say putting stuff on
22 shelves --

23 A. Yes.

24 Q. -- is there a need for like a portable
25 ladder or a staircase to use?

1 **A.** Yes. There's probably five portable
2 ladders, rolling ladders in the warehouse.

3 **Q.** And that requires climbing obviously?

4 **A.** Yes.

5 **Q.** Now, with regard to lifting, is there any
6 need for bending or squatting to do that?

7 **A.** Yes.

8 **Q.** Is there a proper mechanism by which one
9 lifts products?

10 **A.** Well, yes. I mean again, you know, we try
11 to make sure that all the warehouse workers know
12 proper lifting techniques. When you're lifting
13 a brake drum or something like that you should
14 squat down and lift with your legs, not your
15 back. You know, typical standard ways to lift
16 product, or anything.

17 **Q.** Now, you testified with regard to having
18 observed Mr. Shaw walking across that parking
19 lot. How many times approximately did you see
20 him before you said something?

21 **A.** Probably five or six times.

22 **Q.** And what was it that finally made you
23 decide that you needed to talk to someone?

24 **A.** Well, again, you know, I'm in that office
25 regularly and I would observe Ricky coming

1 across and sometimes it would take him ten or
2 fifteen minutes to walk that eighty feet, and
3 the other times I also noticed that when I was
4 in the warehouse I would occasionally witness
5 Ricky on a forklift and he was hesitant to do
6 anything else in my opinion, you know, he wanted
7 to stay on the forklift, which is not, we do
8 everything in the warehouse, you know, it's not
9 just, you know, we don't have specific forklift
10 operators, and he basically needed to pull
11 orders and not use a forklift. So that's when I
12 said something.

13 Q. What dangers were you concerned about?

14 A. Well, the biggest thing I didn't want Ricky
15 to get hurt lifting or, you know, squatting or
16 doing anything that you normally have to do in
17 the warehouse. Secondly I was worried about
18 when he was on the forklift, which is what he
19 was doing most of the time, having to take your
20 foot off the brake or off the gas and put it on
21 the brake quickly. I mean we have a lot of
22 people, including myself, walking in and out of
23 the warehouse, going down different aisles. If
24 you come around that corner and there's someone
25 standing there, you got to take your foot off

1 the gas and put it on the brake pretty quick,
2 and I was concerned that Ricky would have a
3 problem doing that.

4 Q. Now, when you did go, who did you go to
5 first after -- when you finally made the
6 decision that you needed to say something who
7 did you go to?

8 A. I believe it was Pat. I'm pretty sure I
9 talked to Pat Whitmire first because Pat is
10 responsible for daily operations of both of the
11 warehouses, that we oversaw both warehouses.
12 Tim Kline worked directly for him, and I
13 interact with Pat more because he's in the
14 same building as I am and not in Warehouse B.
15 I believe I talked to him first.

16 Q. And what did you say to him, do you
17 remember?

18 A. I don't remember specifically. Something
19 to the effect that I think Ricky is having some
20 difficulty and we better find out what's going
21 on. I don't know exactly what I said.

22 Q. And then after you spoke to Pat what did
23 you do next?

24 A. I basically talked to Pat to get his
25 opinion and both of us agreed that we had to

1 find out what was going on with Ricky, and
2 that's when we went to Bryan, because he was
3 overseeing human resources at the time, to make
4 sure that, you know, we did what we were
5 supposed to do so we went and saw Bryan.

6 Q. And when you went to see Bryan what was
7 your concern at that time?

8 A. Well, the same concerns that I expressed
9 earlier, you know, first of all whether or not
10 Ricky would hurt himself, and secondly whether
11 or not he would hurt somebody else if he was on
12 the forklift, and whether or not he could
13 actually do what needed to be done in the
14 warehouse position.

15 Q. Now, prior to going to Bryan to discuss
16 it with him, had Ricky ever come to you and
17 discussed with you any kind of medical condition
18 that he had?

19 A. No.

20 Q. Did he ever come to you and ask for any
21 kind of accommodation to do his job?

22 A. No.

23 Q. Did he ever indicate to you that he was
24 having any kinds of medical problems or concerns
25 about being able to do his job?

1 **A.** No.

2 **Q.** Now, after you met with Bryan do you
3 remember what happened in that first meeting?

4 **A.** I don't specifically, no. I believe that
5 he told us that, oh, I have to have a doctor
6 evaluate him and see if he can continue to do
7 the job that he's required to do. I'm pretty
8 sure -- I mean, again I don't know the specific
9 wording of what happened, but that was the gist
10 of it from what I remember.

11 **Q.** And did you meet one time only or did you
12 meet several times to discuss the situation as
13 to --

14 **A.** I believe myself I only talked to Bryan
15 once specifically about Ricky before he went to
16 the doctors.

17 **Q.** And did you ever find out after he went to
18 the doctors what his medical condition was?

19 **A.** Did I find out? No.

20 **Q.** And what did you learn after he went to
21 that medical exam?

22 **A.** That the evaluation that the doctor gave
23 him said that he was not --

24 **MR. CROCENZI:** Objection. Hearsay.

25 **MS. SALTZ:** Well, it's again --

1 THE COURT: Not a party admission?

2 MS. SALTZ: Right. I just stopped to think
3 for a moment. Let me strike, thank you.

4 THE COURT: Sustained.

5 BY MS. SALTZ:

6 Q. Did someone advise you that -- how did you
7 come to find out if Ricky was coming back to
8 work or not?

9 A. Either Brenda Hoffman or Bryan Sheldon told
10 me that the evaluation --

11 MR. CROCENZI: Objection about what the
12 evaluation said. I think he can testify about
13 what they said about Ricky coming back to work
14 or not but not about the evaluation itself.

15 THE COURT: All right.

16 Q. Let me ask you this question. Do you even
17 know what the evaluation said?

18 A. I do now, yes.

19 Q. But then, not what you know now, then did
20 you know at that time?

21 A. I did not see the evaluation, no, not at
22 that time.

23 Q. What did you know at that time?

24 A. I knew what either Bryan Sheldon or Brenda
25 Hoffman told me about the evaluation.

1 Q. Did they tell you Ricky was coming back to
2 work?

3 A. No.

4 Q. Did they tell you that Ricky failed the
5 exam?

6 A. Yes.

7 Q. What kind of a worker was Mr. Shaw?

8 A. Mr. Shaw was a good worker in my opinion.

9 Q. Were you sorry to have lost him?

10 A. I am, yes. You know, he did, Ricky did a
11 very good job for us. When we moved, we moved
12 one of our big locations in Johnstown a few
13 years, two or three years before that, and I had
14 to work 32 days straight, but my crews came up
15 from Carlisle to do that and Ricky was, Ricky
16 did a heck of a job then, and I was directly
17 responsible at that time. That's why I know
18 that versus, you know, later on when he was
19 working directly under Tim Kline.

20 Q. Did you want him to come back?

21 A. Yes.

22 Q. When Mr. Shaw went out on medical leave you
23 were aware he did go out on medical leave?

24 A. Yes.

25 Q. When he went out on medical leave did you

1 replace him?

2 A. No, not right away.

3 Q. Do you know how many months went by before
4 you replaced him?

5 A. It was five or six months. It was a long
6 time and, you know, we didn't know, I know that
7 I know that he was going to different doctors
8 and trying to get things sorted out. So the job
9 was left open until we had a final disposition
10 of what his status was.

11 Q. Were you aware that he had gone to two more
12 fit for duty exams?

13 A. I wasn't specifically aware of the times
14 that he was going to different doctors, no.

15 Q. And would you have taken Ricky back?

16 A. Yes.

17 Q. Would you take him back today?

18 A. Sure.

19 MS. SALTZ: I have no further questions.

20 THE COURT: Anything further, Mr. Crocenzi?

21 MR. CROCENZI: Yes, Your Honor, some
22 follow-up questions.

23 REDIRECT BY MR. CROCENZI:

24 Q. Mr. Hoffman, you didn't regularly work in
25 warehouse B at Carlisle, is that right?

1 **A.** Not in my present position, no.

2 **Q.** Your position as director of parts
3 operations?

4 **A.** No.

5 **Q.** I think your testimony regarding the
6 working in the warehouse was at some other
7 location at some other time during your
8 employment with Cumberland Truck?

9 **A.** That's correct.

10 **Q.** Mr. Kline was the supervisor who worked
11 side by side with Ricky at Warehouse B, is that
12 right?

13 **A.** Yes.

14 **Q.** Now, isn't it true that Ricky could have
15 been on the forklift more than the 20 percent,
16 you indicated a typical warehouse worker would
17 spend on the forklift?

18 **A.** Could he have been? Sure. He could have
19 been.

20 **Q.** Because Mr. Kline was overseeing the direct
21 operations of Warehouse B, he could have had
22 Ricky working on that forklift more than 20
23 percent of the time, is that right?

24 **A.** He could have.

25 **Q.** Isn't it true that a warehouse worker can

1 also sit to look at paperwork?

2 A. Yes. A lot of times when a large order
3 will come in we'll usually have two warehouse
4 workers, one will be actually checking in the
5 product, the other person will be checking the
6 paperwork off, you know, or whatever.

7 Q. When you testified that you saw Ricky on
8 the forklift and it was your impression he was
9 hesitant to get off the forklift --

10 A. Yes.

11 Q. -- did you ever write him up, give him a
12 reprimand at all about that?

13 A. I spoke to him about the one situation,
14 yes.

15 Q. Did you ever give a written reprimand?

16 A. No.

17 Q. Did you ever speak with Mr. Kline about
18 that incident with the forklift?

19 A. Not that I recall, no.

20 Q. During the time you were in the warehouse
21 this January-February time period we're talking
22 about --

23 A. Uh-huh.

24 Q. -- did you see Ricky have any trouble
25 operating the forklift?

1 **A.** No.

2 **Q.** It's also true that in Warehouse B
3 warehouse workers would have carts available to
4 carry heavy items from one location to the next?

5 **A.** Yes.

6 **Q.** They also had pallet jacks?

7 **A.** Yes.

8 **Q.** Now, the product was typically stored on a
9 wooden pallet, is that right?

10 **A.** For the most part, yes, probably 70 percent
11 of the product over there.

12 **Q.** Can you describe for the jury what a pallet
13 is?

14 **A.** Yeah, a pallet is, it's basically a roughly
15 four foot by four foot square wooden structure
16 that holds heavy products. So they, you know,
17 it would -- like you can put a forklift under it
18 to lift it or a pallet jack, which is just a
19 hand operated jack for lifting a pallet up and
20 moving the product around or putting it up on a
21 shelf or something like that.

22 **Q.** And a pallet jack is something that's on
23 the ground that has forks on it that's able to
24 get into the pallet?

25 **A.** Right.

1 Q. And you're able to use a hydraulic lift --

2 A. Right.

3 Q. -- to lift the pallet off the ground?

4 A. Just enough to move it. You can't use it
5 to put product up on the shelf or anything like
6 that, yeah.

7 Q. That's what a forklift is for?

8 A. That's right.

9 Q. Okay. Was there a stool in Warehouse B
10 where a person could sit and check paperwork for
11 products when they came in?

12 A. There is a stool by the receiving desk.

13 MR. CROCENZI: That's all I have, Your
14 Honor. Thank you.

15 THE COURT: The pallet jack is on wheels
16 though?

17 THE WITNESS: Yes.

18 THE COURT: You can move the pallet once
19 it's lifted in the air, you can move it --

20 THE WITNESS: Right. A pallet has slots
21 underneath it and a pallet jack just two forks.
22 So when you slide it under the pallet itself the
23 two wheels in the back go into this slot. So
24 when you jack it up then those wheels will push
25 everything up.

1 THE COURT: But it's kind of bulky and hard
2 to move. Isn't it easier to move it with a
3 forklift than a pallet jack?

4 THE WITNESS: Oh, yeah. Yeah, a forklift
5 obviously has an engine and, you know, a pallet
6 jack you got to pull it or push it to make it go
7 wherever you want it to go.

8 THE COURT: All right. Anything further,
9 Ms. Saltz?

10 MS. SALTZ: No, Your Honor. Thank you.

11 THE COURT: All right. Thank you very much,
12 you may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Your next witness, Mr. Russo?

15 MR. RUSSO: Our next witness is
16 Mr. Whitmire.

17 THE COURT: All right.

18 MS. SALTZ: Your Honor, is Mr. Hoffman
19 released at this point?

20 THE COURT: Any need for recall at this
21 time?

22 MR. CROCENZI: Not at this time, no.

23 THE COURT: Is he a possible rebuttal
24 witness? If he is then he should be excused at
25 least outside the courtroom.

1 MR. CROCENZI: Yes. He could be a possible
2 rebuttal witness.

3 THE COURT: All right. Very well.

4 MR. CROCENZI: But as far as today is
5 concerned we don't see any further --

6 THE COURT: All right, you're released for
7 today, but you may be, just recognize you may be
8 recalled.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 MR. CROCENZI: And, Your Honor, because of
12 the multiple days of the trial can we have an
13 instruction that the witnesses, since they are
14 sequestered here, wouldn't be talking about the
15 case if they go back to the office?

16 THE COURT: Well, that's really a subject
17 for examination.

18 MR. CROCENZI: Okay.

19 THE COURT: You can find out if those
20 conversations have taken place.

21 MR. CROCENZI: Thank you.

22 THE COURT: I'm not going to prohibit them
23 from having conversations, but obviously fertile
24 ground for cross examination.

25 (John Patrick Whitmire was called to

1 testify and was sworn by the courtroom deputy.)

2 COURTROOM DEPUTY: Please be seated and
3 state your full name for the record.

4 THE WITNESS: John Patrick Whitmire.

5 DIRECT EXAMINATION BY MR. RUSSO:

6 Q. Good afternoon, Mr. Whitmire.

7 A. Good afternoon.

8 Q. Could you tell us what your position at
9 Cumberland Truck is?

10 A. I'm the eastern regional operations
11 manager.

12 Q. Have you held any other positions with
13 Cumberland Truck?

14 A. Yes. The parts manager and the parts
15 logistics manager.

16 Q. And when did you start with Cumberland
17 Truck?

18 A. February of 2002.

19 Q. Had you ever worked for Cumberland Truck
20 prior to that?

21 A. Yes, two times before that.

22 Q. And when did you first begin working with
23 Cumberland Truck?

24 A. June of 1986 I believe.

25 Q. And that first employment with Cumberland

1 Truck did you hold any other positions?

2 A. No, I was a warehouse worker.

3 Q. Okay. Was that similar to the position
4 that Ricky Shaw had?

5 A. No. We were much smaller then.

6 Q. Okay. We've come to the conclusion that
7 there are two warehouses, a Warehouse A and a
8 Warehouse B at Cumberland Truck in Carlisle.
9 Is that correct?

10 A. Correct.

11 Q. What's the difference between the two
12 warehouses?

13 A. Warehouse A primarily houses our small
14 parts. Warehouse B warehouses our bulk parts.

15 Q. At some point were you a supervisor of one
16 or more of those warehouses?

17 A. Yes, both.

18 Q. And when was that?

19 A. 2004 I believe.

20 Q. Until when?

21 A. 2011, January of this year.

22 Q. Can you describe for us the physical layout
23 of Warehouse B?

24 A. You walk in the door there's pallet racks
25 under a deck level no more than ten feet high,

1 and then we have I think there's about eight
2 aisles of racks that are twenty foot high,
3 fifteen foot high, excuse me.

4 Q. Is there a second level of racks?

5 A. Yes.

6 Q. And how high is that second level of racks?

7 A. Second level of racks is probably ten foot.

8 Q. So at the height of the second rack is it
9 twenty feet?

10 A. Well, it's setting on top of a deck, so
11 there's a ten foot underneath and a ten foot on
12 the top.

13 Q. Okay. Do you know Ricky Shaw?

14 A. Yes, I do.

15 Q. And how do you know Ricky?

16 A. He worked for me.

17 Q. Had he been somebody who worked for you his
18 entire duration with Cumberland Truck?

19 A. Ricky was there when I came back.

20 Q. And what was his position?

21 A. He worked in Warehouse B.

22 Q. Was there a title for the job that he held?

23 A. No. Just a Warehouse B worker.

24 Q. Who was Ricky's immediate supervisor in
25 2002?

1 **A.** Tim Kline.

2 **Q.** Through 2007 did that ever change?

3 **A.** No, I don't think so.

4 **Q.** And who was Tim Kline's supervisor?

5 **A.** Until 2004 it was Chuck Hoffman and then it
6 was me and then it was me.

7 **Q.** Did you supervise anyone else at Cumberland
8 Truck?

9 **A.** Yeah, I had the whole parts operation in
10 Carlisle.

11 **Q.** Where was your office located?

12 **A.** In Building A at the parts counter.

13 **Q.** Was that near Mr. Hoffman's office?

14 **A.** No.

15 **Q.** And physically where was it in comparison
16 to Mr. Hoffman's office?

17 **A.** He was in the back of the building, I was
18 in the front of the building.

19 **Q.** Same building, just opposite ends?

20 **A.** Yeah.

21 **Q.** And this building is separate from the
22 warehouse, a separate structure from the
23 warehouse, isn't that correct?

24 **A.** From Warehouse B, that's correct.

25 **Q.** Has your office always been in that

1 location?

2 A. Yes.

3 Q. And how often would you find yourself in
4 warehouse B?

5 A. A couple of times a day as needed.

6 Q. Give me an example, why would you need to
7 be in warehouse B?

8 A. If I had to check inventory, a discrepancy
9 in shipping or whatever needed.

10 Q. And when you went to Warehouse B to do
11 these things that you just mentioned, typically
12 how long would you be in the warehouse?

13 A. It varied. Until I was done doing what I
14 needed to do. It could have been two hours, it
15 could have been five minutes.

16 Q. Did you ever spend all day in the
17 warehouse?

18 A. Yes.

19 Q. Was that a frequent occurrence?

20 A. No. When we did the pallet rack move
21 project or the mezzanine project I was there
22 all day.

23 Q. How many employees did you have in
24 warehouse B in 2006?

25 A. I believe twelve. 38 employees total, so

1 I'm really not sure.

2 Q. At that point you were running two shifts,
3 is that correct?

4 A. Yes.

5 Q. How many people were on that first shift?

6 A. In Warehouse B?

7 Q. Yes.

8 A. It would have been ten of them.

9 Q. And was Ricky on that first shift in
10 Warehouse B?

11 A. Yes.

12 Q. Had you ever had the opportunity to perform
13 the warehouse worker in Warehouse B in Carlisle?

14 A. Yes.

15 Q. And when did you do that?

16 A. When needed.

17 Q. And was that something you did as part of
18 your supervisory duties, you just pitched in
19 when it was needed?

20 A. I just pitched in and did what needed to be
21 done.

22 Q. How much of your time would you say you did
23 this job of warehouse worker?

24 A. Five percent. I don't know how to answer
25 the question. It depended.

1 Q. Okay. Did you ever lift anything while you
2 were working in Warehouse B?

3 A. Yes.

4 Q. And what was the heaviest item you had to
5 lift?

6 A. The heaviest thing I lifted was probably
7 125 pounds.

8 Q. And what's the heaviest item that a
9 warehouse worker would lift unassisted?

10 A. It depended on the warehouse worker.

11 Q. Okay. How about Ricky Shaw?

12 A. He could lift a house.

13 (Brief pause.)

14 Q. Typically would an employee in the
15 warehouse have to carry an item?

16 A. Sometimes, yes.

17 Q. And how far would they carry an item?

18 A. They could carry it from the front to the
19 back of the warehouse.

20 Q. And what's that distance?

21 A. A hundred feet.

22 Q. Do you require -- do you recall giving your
23 deposition in Mr. Crocenzi's office on July
24 11th, 2010?

25 A. Yes, I do.

1 Q. And I'm going to show you a copy of your
2 deposition transcript.

3 THE COURT: Mr. Russo, could you give the
4 page number for --

5 Q. I'm sorry, it's page number 10, line -- or
6 page number 8, line number 10. Page number 8,
7 line number 10. In fact it's highlighted in
8 that deposition. Take a moment to review that.

9 A. Okay.

10 Q. Does that refresh your recollection about
11 an answer to the question about the heaviest
12 item that somebody would lift unassisted?

13 A. That's what's stipulated in the
14 requirements when we run an ad.

15 Q. I'm not quite sure I understand that
16 question, or that answer. What's stipulated in
17 the ad?

18 A. You'd have to at least lift 65 pounds
19 unassisted.

20 Q. That's what you advertised --

21 A. Yes.

22 Q. -- in public newspapers for people who want
23 this job?

24 A. Yes.

25 Q. So is that different than what actually

1 happened?

2 A. Sometimes, yes.

3 Q. Is it different than the actual job
4 requirement?

5 A. No.

6 Q. Are there any implements available or tools
7 available for warehouse workers to use when
8 they're trying to move or carry an item?

9 A. Yes.

10 Q. For example what's available?

11 A. Forklift. A hand truck. A cart. Pallet
12 jack.

13 Q. Have you seen your subordinates using those
14 items when moving or carrying things?

15 A. Yes.

16 Q. Have you ever used those items when you've
17 moved things?

18 A. Yes.

19 (Brief pause.)

20 Q. I'm going to show you what has been marked
21 as Plaintiff's Exhibit Number 9, which is titled
22 the job analysis. Mr. Whitmire, have you ever
23 seen that document before?

24 A. Yes.

25 Q. And you didn't contribute any information

1 to the creation of that document, is that
2 correct?

3 A. No.

4 Q. This document indicates that lifting is
5 required occasionally up to 150 pounds, is that
6 correct?

7 A. Yes.

8 Q. Now, that's different than what you just
9 told us you advertise in newspapers?

10 A. That's lifted with assistance.

11 Q. So in this job analysis is it your
12 interpretation that lifting 150 pounds
13 occasionally means you're supposed to lift 150
14 pounds occasionally with assistance?

15 A. Yes.

16 Q. And then the lifting requirement on this
17 document also says that you need to lift
18 frequently seventy pounds. Is that an accurate
19 description of what's required of a warehouse
20 worker?

21 A. Yes.

22 Q. And again based on your testimony that you
23 just gave us I would assume that you also expect
24 people to lift seventy pounds with assistance?

25 A. Yes.

1 Q. Carrying is the next category, carrying
2 occasionally 150 pounds. Is that an accurate
3 description of what a warehouse worker does?

4 A. No.

5 Q. What's accurate?

6 A. That depends on the employee, on the
7 person.

8 Q. So it varies?

9 A. Uh-huh.

10 Q. What about carrying weight or carrying
11 something up to seventy pounds frequently?

12 A. Again it depends on the employee.

13 Q. So is your testimony that's not really
14 accurate for what a warehouse worker does?

15 A. Yes.

16 Q. And again safe to assume that if I can't
17 lift it by myself, that for any worker you'd
18 expect them to do it with assistance if they're
19 going to carry it?

20 A. Yep.

21 Q. Okay. Did you ever see Ricky Shaw prior to
22 February 26th, 2007 have any trouble lifting
23 items?

24 A. No.

25 Q. Did you ever see Ricky have any trouble

1 carrying items?

2 A. No.

3 Q. Standing. Did you ever see Ricky have any
4 trouble standing?

5 A. No, not standing.

6 Q. How about bending?

7 A. Yes.

8 Q. And when did you see him having trouble
9 bending?

10 A. You want the date?

11 Q. Time frame.

12 A. He was -- I don't know the time frame.

13 Q. And when you say bending, Ricky is not so
14 small, bending that he couldn't touch his toes?
15 Bending that -- describe what problems you saw.

16 A. Just bending down like he was moving a
17 spring or something. I don't really recall the
18 whole particulars of the incident.

19 Q. So are you thinking of one incident or
20 there's multiple and that's the only one you can
21 think of?

22 A. That's the only one I can think of.

23 Q. And again time frame, any feel for when
24 that happened?

25 A. I have no clue.

1 Q. Did you ever discipline him for not being
2 able to bend?

3 A. No.

4 Q. Was this something that you felt was truly
5 Ricky not being to perform his duties?

6 A. No.

7 Q. So he was able to perform his duties?

8 A. Uh-huh.

9 THE COURT: I'm sorry, you have to give
10 verbal responses.

11 A. Yes. Sorry. Yes.

12 Q. What about squatting? How much squatting
13 does your typical warehouse worker do?

14 A. Again it depends on what they're pulling.

15 Q. I'm sorry, depends on what they're --

16 A. It depends on what parts they're
17 retrieving.

18 Q. Okay. Had you ever seen Ricky having
19 trouble prior to 2007 with squatting?

20 A. Yes.

21 Q. Again time frame?

22 A. I believe it was the same time.

23 Q. At that point did you think that it caused
24 Ricky to be unable to perform his duties?

25 A. No.

1 Q. How about climbing? Have you ever seen any
2 difficulties with Ricky climbing?

3 A. No.

4 Q. How about walking?

5 A. Yes.

6 Q. Tell me about walking. What difficulties
7 did you see with Ricky walking?

8 A. He just looked like it labored for him to
9 walk. It was hard for him to walk at times. It
10 wasn't a constant thing.

11 (Brief pause.)

12 Q. I'm going to call your attention to what's
13 been marked as Plaintiff's Exhibit Number 6.
14 Have you ever seen what's Plaintiff's Exhibit
15 Number 6 before?

16 A. Yes.

17 Q. And when did you see that?

18 A. When I was hired --

19 Q. Let me strike that and ask you, had you
20 seen that prior to this litigation?

21 A. Yes.

22 Q. And what is that document?

23 A. It's what's in our policy manual.

24 Q. And is it fair to say this is a job
25 description of the distribution warehouse

1 worker?

2 A. Yes.

3 Q. Did you have any input into the creation of
4 this document?

5 A. No.

6 Q. Putting that aside for a second, did you
7 ever create a job description for this warehouse
8 worker position?

9 A. No.

10 Q. Are you sure about that?

11 A. Not that I recall, no.

12 (Brief pause.)

13 Q. Do you recall, do you have a job
14 description for your employees?

15 A. Yes.

16 Q. And what is your job description for the
17 employees?

18 A. As far as which employees?

19 Q. Warehouse workers, I apologize.

20 A. That is the job description for the
21 warehouse employees.

22 Q. Okay. Do you recall creating your own
23 warehouse worker job description that you
24 provided to HR at some point?

25 A. No, I don't recall that.

1 Q. Mr. Whitmire, I'm going to call your
2 attention to page 12 of your deposition which
3 was on January 11th, 2010, and page 12, line 13.
4 Can you take a moment, just read through that
5 highlighted section?

6 A. Page 12?

7 Q. Yes.

8 (Brief pause.)

9 A. Yes.

10 Q. Does that refresh your memory about talking
11 with us about another job description that you
12 physically created?

13 A. No.

14 Q. Okay.

15 (Brief pause.)

16 Q. In front of you you have exhibit,
17 Plaintiff's Exhibit Number 9 and Plaintiff's
18 Exhibit Number 6.

19 A. Okay.

20 Q. As a supervisor of Warehouse B who
21 supervises warehouse workers, which job
22 description is more accurate?

23 (Brief pause.)

24 A. Both of them.

25 Q. They're both accurate?

1 **A.** Uh-huh, yes.

2 **Q.** Would you agree with me that Plaintiff's
3 Exhibit Number 6 it says nothing about climbing?

4 **A.** No.

5 **Q.** You would not agree with me?

6 **A.** No, it says nothing about climbing.

7 THE COURT: So yes, you would agree with
8 that?

9 **A.** Yes, I would agree with you.

10 **Q.** And would you agree with me that
11 Plaintiff's Number 6 says nothing about
12 squatting?

13 **A.** Yes, I agree with you.

14 **Q.** Nor does it say anything about bending?

15 **A.** Yes.

16 **Q.** Nor does it say anything about a
17 requirement about walking?

18 **A.** Yes.

19 **Q.** Again no requirement with respect to
20 standing?

21 **A.** Yes.

22 **Q.** And no requirement with respect to
23 carrying?

24 **A.** Yes.

25 **Q.** How, there is a requirement which says you

1 may have to I believe lift up to 150 pounds on
2 an occasional basis and seventy pounds on a
3 frequent basis, is that correct?

4 A. Yes.

5 Q. Do you believe that Ricky was a qualified
6 employee based on his job skills and abilities?

7 A. Yes.

8 Q. And do you believe that Ricky could perform
9 those duties?

10 A. Yes.

11 Q. Do you believe that he was qualified to do
12 the job based on what you physically saw of him?

13 A. Yes.

14 Q. And based on what you physically saw of him
15 did you believe that he was able to do the job?

16 A. Yes.

17 Q. At some point did you consider him to be
18 the lead receiver in warehouse B?

19 A. I didn't. Mr. Kline did.

20 Q. And what would that mean to Mr. Kline or to
21 anyone else?

22 A. He primarily did the shipping and
23 receiving.

24 Q. And what's primarily involved in shipping
25 and receiving?

1 **A.** Pulling the orders, loading the truck,
2 unloading the truck.

3 **Q.** Is that primarily accomplished by using a
4 forklift?

5 **A.** If one needed, yes.

6 **Q.** Okay. When Ricky would take the product
7 off of a truck with a forklift, what would
8 happen to it at that point?

9 **A.** He would put it in the staging area to be
10 checked in and received.

11 **Q.** And when you say checked in for staging or
12 receiving, what does that mean to us?

13 **A.** They would unload the truck, put it in an
14 area, and then when we got time we checked it in
15 and received it in our inventory and then put it
16 away.

17 **Q.** So when you check in and receive it into
18 your inventory, are you taking a bill of lading
19 or some document and checking off to make sure
20 you got different parts?

21 **A.** Yes.

22 **Q.** And are they're physically computer entered
23 into an inventory system?

24 **A.** Yes.

25 **Q.** And is that all done in warehouse B?

1 **A.** No.

2 **Q.** Where is that done?

3 **A.** The warehouse work is done in Warehouse B.
4 The receiving is done in the front office.

5 **Q.** And the front office part, is that the
6 actual putting inventory into the computer?

7 **A.** Yes.

8 **Q.** So everything we talked about is done in
9 Warehouse B except putting it into the computer?

10 **A.** Yes.

11 **Q.** What's the time frame in which Mr. Kline
12 believed Ricky was the lead receiver?

13 **A.** I don't have the time frame. I guess 2007.

14 **Q.** Once all that's checked in and received is
15 it then put on shelves?

16 **A.** Yes.

17 **Q.** Is that accomplished again using a
18 forklift?

19 **A.** It depends. Some is done with a hand
20 truck, some is done with a pallet jack.

21 **Q.** So it depends on where it needs to go and
22 what kind of item it is?

23 **A.** Yep, yes.

24 **Q.** In February of 2007 did you see Ricky
25 lifting items?

1 **A.** Yes.

2 **Q.** And what was the biggest item you saw him
3 lift?

4 **A.** I don't recall the item. It could have
5 been anything.

6 **Q.** Was he lifting seventy pounds?

7 **A.** I'm sure he was.

8 **Q.** Was he lifting a hundred pounds?

9 **A.** Again I'm sure he was. Knowing Ricky I
10 really didn't witness him, any particular thing
11 comes to mind.

12 **Q.** Do you think Ricky at that point could have
13 lifted 150 pounds occasionally?

14 **A.** Probably if he wanted to, head.

15 **Q.** Was he able to lift those things by himself
16 if he wanted to?

17 **A.** Yes.

18 **Q.** How about carrying things? At that point
19 in February of 2007 did you see Ricky carrying
20 items in the warehouse?

21 **A.** I'm sure I did. I don't recall anything
22 specific.

23 **Q.** You're not going to be able to recall any
24 kind of items he --

25 **A.** No.

1 Q. Would you agree that the items probably
2 weighed in excess of 65 pounds?

3 A. I'm sure they did.

4 Q. In general Cumberland Truck what kind of
5 items weighed 65 pounds?

6 A. Cases of oil, certain brake drums. There's
7 a number of parts.

8 Q. And are the weights of these items
9 identified in catalogs or billing ladles or
10 something of that nature?

11 A. Most of them are in catalogs, yes.

12 Q. Again in February of 2007 you told us that
13 you saw difficulty with Ricky walking, is that
14 correct?

15 A. Yes.

16 Q. But the rest of the items which are on
17 Exhibit 9 you didn't see him having any
18 difficulty performing?

19 A. No. No.

20 Q. Did you ever discipline Ricky for any
21 concerns that you had with walking?

22 A. No.

23 Q. Ever put any notes in his personnel file
24 about that?

25 A. Not that I recall, no.

1 Q. Were you a part of Ricky's evaluation
2 process?

3 A. No.

4 Q. Did you approve his evaluation?

5 A. Yes.

6 Q. And when did you begin to approve Ricky's
7 evaluation?

8 A. When I took over the warehouse in 2004.

9 Q. I'm going to show you we've marked as
10 Plaintiff's Number 3 for identification. Can
11 you identify what that is?

12 A. It's an evaluation.

13 Q. And is that your signature --

14 A. Yes.

15 Q. -- on the fourth page?

16 A. Yes.

17 MR. RUSSO: I would like to publish
18 Plaintiff's Exhibit 3 to the jury.

19 THE COURT: Any objections?

20 MS. SALTZ: No objection.

21 THE COURT: You may.

22 BY MR. RUSSO:

23 Q. Ladies and gentlemen, hopefully you see in
24 front of you on the screen a document. If you
25 can't let us know and we'll make sure the

1 screens are turned on. And, Mr. Whitmire, is
2 that your signature where it says "approved by"?

3 A. Yes.

4 THE COURT: For the record, Mr. Russo, this
5 is page 4?

6 Q. This is page 4, yes, and what I'm going to
7 do, Mr. Whitmire, is I'm going to go through the
8 pages and show you page 1 and then I'm going to
9 go through page 2, and, Mr. Whitmire, the way it
10 appears as though this is sort of a document
11 that you'd almost read side by side, page 2 and
12 page 3. It looks like that there's a category
13 on the left-hand side and then performance
14 categories, is that correct?

15 A. Uh-huh.

16 Q. And I'm going to show the next page, which
17 is the actual scores that were provided.

18 A. Yes.

19 Q. Was there anything within those scores that
20 raised concern for you?

21 A. No.

22 Q. Then I'm going to show you the comments
23 section, and again did you make any comments on
24 this evaluation?

25 A. Yes.

1 Q. And where were they?

2 A. Both comments were mine.

3 Q. Where I just marked the spot, is that your
4 comment?

5 A. Both comments, yes.

6 Q. Those two, correct?

7 A. Correct, yes.

8 Q. Would you agree that the 2004 evaluation
9 was acceptable?

10 A. Yes.

11 Q. Good even?

12 A. Good.

13 (Brief pause.)

14 Q. I'm going to show you what we have marked
15 as P-4. Can you identify what P-4 is?

16 A. Another evaluation.

17 Q. And this is for the next year, correct?

18 A. Yes.

19 Q. Do you know is this a true and correct copy
20 of that document?

21 A. Yes.

22 Q. This one does not bear your signature,
23 correct?

24 A. No.

25 Q. Would you have approved this one?

1 **A.** Apparently I didn't.

2 **Q.** It's your belief, your testimony you did
3 not?

4 **A.** I did not.

5 **Q.** Okay. With what you see in Plaintiff's 4
6 would it have raised any concerns for you?

7 **A.** No.

8 **Q.** And appears to be a good evaluation as
9 well?

10 **A.** Yes.

11 **Q.** Okay. I'm going to show you what's been
12 premarked as Plaintiff's Exhibit Number 5. Can
13 you identify what Plaintiff's Exhibit Number 5
14 is?

15 **A.** An evaluation.

16 **Q.** This was Mr. Shaw's final evaluation
17 correct?

18 **A.** I believe so, yes.

19 **Q.** And is that your signature in the lower
20 right-hand corner of page 2?

21 **A.** Yes, it is.

22 MR. RUSSO: Your Honor, I request to publish
23 this to the jury as well.

24 THE COURT: Any objection?

25 MS. SALTZ: No objection.

1 THE COURT: You may.

2 BY MR. RUSSO:

3 Q. Mr. Whitmire, I'm going to show you the
4 first page. On this first page do you see
5 anything that concerns you as a supervisor?

6 A. No.

7 Q. And number 2 lists productivity?

8 A. Uh-huh.

9 Q. And he has a score of 79, is that correct?

10 A. Yes.

11 Q. And there it says, "I believe gets done
12 what he physically can." Is that also correct?

13 A. Yes.

14 Q. And a score of 79, is that just the top end
15 of the good range, just below the very good?

16 A. Yes.

17 Q. Mr. Whitmire, this is page 2 of Exhibit
18 Number 5 on the lower right-hand corner, is that
19 your signature?

20 A. Yes.

21 Q. And next to that is that the signature of
22 the Ricky's supervisor, Mr. Kline?

23 A. Yes.

24 Q. Within this second page is there anything
25 here that concerns you about his evaluation?

1 **A.** No.

2 **Q.** Again it's a good evaluation?

3 **A.** Yes.

4 **Q.** And the date of this evaluation, January
5 11th, 2007, is that correct? I'm sorry, January
6 10th, 2007. I believe that's in the lower
7 left-hand corner --

8 **A.** Yes.

9 **Q.** -- of Mr. Kline's signature?

10 (Brief pause.)

11 **Q.** Mr. Whitmire, did you ever receive any
12 complaints about Ricky seeming to be intoxicated
13 or dizzy or being under the effects of some kind
14 of medication?

15 **A.** No.

16 **Q.** Did you ever see Ricky walking with a cane?

17 **A.** Yes.

18 **Q.** And when was this?

19 **A.** When he was in the warehouse. I can't tell
20 you an exact time, I don't know.

21 **Q.** Was it from the first day Ricky began
22 working with Cumberland Truck?

23 **A.** No.

24 **Q.** Was it toward the end of his employment
25 with Cumberland Truck?

1 **A.** Yes.

2 **Q.** Did you ever talk to him about his cane?

3 **A.** I don't know specifically about the cane.

4 I knew we talked about his knees.

5 **Q.** When did you talk to him about his knees?

6 **A.** Towards the end.

7 **Q.** Okay. What do you recall about the

8 conversation regarding Ricky's knees?

9 **A.** Just his knees were bothering him. I told
10 him to take it easy.

11 **Q.** What did you mean by that?

12 **A.** Not to overdo himself.

13 **Q.** Expressing a concern?

14 **A.** Yes.

15 **Q.** Did you ever tell him that he couldn't use
16 his cane at work?

17 **A.** No.

18 **Q.** To the best of your knowledge is there any
19 prohibition at Cumberland Truck about using
20 canes?

21 **A.** Not to my knowledge, no.

22 **Q.** Did you ever find it necessary to tell
23 Ricky to stop working because of anything you
24 saw him having difficulty doing?

25 **A.** No.

1 Q. And I would assume also you never told him
2 to stop working because he had difficulty
3 walking?

4 A. No.

5 Q. To the best of your knowledge did Ricky
6 ever ask you to change any of his job duties?

7 A. No.

8 Q. Did you get any reports from Mr. Kline
9 indicating that Ricky was having difficulty
10 performing his work duties?

11 A. The only reports I got from Mr. Kline was
12 that Ricky had trouble going up and down the
13 steps and other employees were pulling carts for
14 him.

15 Q. Did you ever get any complaints or concerns
16 from Mr. Kline that Ricky wasn't productive as
17 an employee?

18 A. No.

19 Q. Who did you report to?

20 A. Chuck Hoffman.

21 Q. And where was Bryan Sheldon in your chain
22 of command?

23 A. Bryan is the controller.

24 Q. So would he be above Mr. Hoffman?

25 A. He's equal to Mr. Hoffman.

1 Q. And you didn't report to Mr. Sheldon, you
2 reported directly to Mr. Hoffman?

3 A. Yes.

4 Q. Did you ever speak to Mr. Hoffman or
5 Mr. Sheldon about your concerns, your
6 observations with Ricky?

7 A. I spoke with Mr. Sheldon.

8 Q. When did you do that?

9 A. The day we sent him for the evaluation.

10 Q. When you spoke with Mr. Sheldon on the day
11 that you sent Ricky to his evaluation, that
12 would have been February 27th, February 26th,
13 2007, is that correct?

14 A. I believe so, yes.

15 Q. At that point did you tell anybody about
16 the conversations that you had with Ricky about
17 his knees?

18 A. Not that I recall.

19 Q. And do you remember what you may have said
20 to Mr. Sheldon at that point?

21 A. Chuck Hoffman came to me and said he
22 witnessed Ricky having problem walking across
23 the parking lot.

24 Q. So fair to say you didn't report this, but
25 somebody sought you out, Mr. Hoffman, to say

1 hey, I'm seeing problems, what are you seeing?

2 A. Yes.

3 Q. So together you went to talk to
4 Mr. Sheldon?

5 A. Yes.

6 Q. Do you remember what was said to
7 Mr. Sheldon at that point?

8 A. Other than what I just said, he had looked
9 like he was really laboring to walk across the
10 parking lot and at that point we were going to
11 send him for an evaluation.

12 Q. At that point you had no other
13 conversations with Mr. Sheldon about Ricky,
14 is that correct?

15 A. Not that I recall, no.

16 Q. And you had no other conversations with
17 Mr. Hoffman about Ricky?

18 A. No, not that I recall.

19 Q. Do you know whether Mr. Sheldon and
20 Mr. Hoffman had additional conversations prior
21 to that?

22 A. I don't know that.

23 Q. Do you remember anything Mr. Hoffman said
24 at that meeting?

25 A. Other than he witnessed him he could barely

1 walk across the parking lot.

2 Q. Did he give you a time frame or incidences?

3 A. No. Just that time.

4 Q. To the best of your knowledge Mr. Hoffman
5 knew of one event?

6 A. To my recollection, yes.

7 Q. At that point you said it seemed that there
8 was a decision that was made to send him to
9 Concentra?

10 A. Yes.

11 Q. Do you know who made that decision?

12 A. Bryan Sheldon.

13 Q. Did you agree with that decision?

14 A. Yes.

15 Q. Why?

16 A. Because if he had trouble walking he needed
17 to get checked out.

18 Q. But you had witnessed this before?

19 A. Not to that extent, no.

20 Q. But this was the first time that you felt
21 it had risen to a level that needed somebody
22 else's intercession?

23 A. From what I was being told, yes.

24 Q. And I'm sorry, you said from what you were
25 being told?

1 **A.** Yes.

2 **Q.** And what were you being told that raised
3 your concern?

4 **A.** That he could barely make it across the
5 parking lot.

6 **Q.** But you didn't see that?

7 **A.** No.

8 **Q.** At some point Ricky was told about this
9 evaluation, correct?

10 **A.** Yes.

11 **Q.** Did you tell him?

12 **A.** I don't remember. I don't believe so.

13 **Q.** Do you remember talking to Ricky at all
14 about the evaluation itself?

15 **A.** I don't remember. I'm sure I did, but I
16 don't remember the conversation.

17 **Q.** Okay. Do you remember Ricky's reaction to
18 you when you talked to him about it?

19 **A.** No.

20 **Q.** Did you send anything to Concentra with
21 Ricky when he left that day?

22 **A.** No.

23 **Q.** Do you know if anybody else did?

24 **A.** I'm sure Brenda did, but I didn't.

25 **Q.** Does Cumberland Truck have a safety

1 committee?

2 A. Yes.

3 Q. What's their function in your opinion?

4 A. They review the issues within our entire
5 company.

6 Q. Safety issues?

7 A. And take them to the owners and make
8 decisions on what they want to do.

9 Q. Did you ask the safety committee to get
10 involved in Ricky Shaw's situations before
11 sending him to Concentra?

12 A. I don't think we had the safety committee
13 at that time.

14 Q. When was the safety committee created?

15 A. I'm not sure.

16 Q. Had you ever seen Ricky operate the
17 forklift with a cane?

18 A. No, I haven't.

19 Q. Did you hear that from somebody at some
20 point?

21 A. Yes.

22 Q. Do you remember who you heard that from?

23 A. Mr. Kline.

24 Q. Mr. Kline? Do you remember when that
25 allegation was lodged?

1 **A.** I heard it after the, after we sent him to
2 Concentra, so I can't tell you when it happened.

3 **Q.** Do you know if Mr. Kline disciplined Ricky
4 for it?

5 **A.** I don't know that.

6 **Q.** You're the manager, would you have signed
7 off on a disciplinary action?

8 **A.** Probably, yes.

9 **Q.** But you never signed off on a disciplinary
10 action which indicated Mr. Shaw was operating a
11 forklift with a cane?

12 **A.** No.

13 **Q.** Do you have anything to do with raises that
14 are given to warehouse workers in Warehouse B?

15 **A.** Just recommendations.

16 **Q.** And in 2007, 8, and 9 was it recommended
17 that warehouse workers get a raise?

18 **A.** Yes, depending on the warehouse worker.

19 **Q.** And it's typically the cost of living index
20 what's used as the gauge?

21 **A.** Yes.

22 **Q.** Do you recall what the average rate of
23 increase was for warehouse workers during that
24 time period?

25 **A.** 2 and a half, 3 percent.

1 Q. And fair that every one of the warehouse
2 workers at that point got a raise?

3 A. Yes.

4 MR. RUSSO: I have nothing further, Your
5 Honor.

6 THE COURT: Cross?

7 CROSS EXAMINATION BY MS. SALTZ:

8 Q. Thank you, Your Honor. Mr. Whitmire, where
9 is your office in location to Warehouse B?

10 A. Now?

11 Q. At the time in 2007.

12 A. In the front of the building at the parts
13 counter.

14 Q. Okay, and from your location could you see
15 that back parking lot between the warehouse and
16 the office?

17 A. No.

18 Q. How often were you in the warehouse on a
19 daily basis?

20 A. As needed.

21 Q. Okay. Were there days that you were not in
22 the warehouse?

23 A. Yes.

24 Q. And during the times that you were in the
25 warehouse, approximately how long would you be

1 in the warehouse?

2 A. It could be five minutes, it could be five
3 hours, depending on the situation.

4 Q. And would that happen on a weekly basis,
5 monthly basis, where you would spend five hours
6 in the warehouse?

7 A. Probably a monthly basis on the five hours,
8 yes.

9 Q. Now, Tim Kline was the manager of Warehouse
10 B?

11 A. Yes.

12 Q. And he reported directly to you?

13 A. Yes.

14 Q. At any point at the end of 2006, early
15 2007, did Mr. Kline come to you and tell you
16 that Ricky Shaw was having problems?

17 A. No.

18 Q. Doing his job?

19 A. No.

20 Q. If Mr. Shaw was having problems doing his
21 job was he required to come to you with that
22 information?

23 A. Yes.

24 Q. What kind of a manager was Mr. Kline?

25 A. Not a good one.

1 Q. After the situation with Mr. Shaw not being
2 able to return to work based on that exam, was
3 any action taken against Mr. Kline?

4 A. Not for that, no.

5 Q. The fact that he didn't disclose to you
6 what was going on in the warehouse with regard
7 to Mr. Shaw, did that play any part in any kind
8 of action with regard to Mr. Kline?

9 A. No.

10 Q. Was he demoted?

11 A. Yes.

12 Q. Why was he demoted?

13 A. Because he wasn't to my standard of a
14 supervisor.

15 Q. And what was it that he wasn't doing that
16 wasn't up to your standard?

17 A. His job.

18 Q. In what way?

19 A. He was lazy.

20 Q. Now, in talking about the two, you still
21 have Number 6 and Number 9 up there, Plaintiff's
22 Exhibit 6 and Plaintiff's Exhibit 9?

23 A. Which one is 9?

24 Q. 9 is the job analysis.

25 A. Yes.

1 Q. And 6 is the assigned duties on page 2.

2 A. Yes.

3 Q. Turn to page 2 on Number 6.

4 A. Okay.

5 Q. Mr. Russo was asking you questions, I
6 believe the question he asked you is that which
7 one of these job descriptions is accurate and
8 you said they both are.

9 A. Okay.

10 Q. Do you recall saying that?

11 A. Yes.

12 Q. Okay. Let's take a look at the one that
13 says Number 6. Now, on there with the exception
14 of heavy lifting are there any physical
15 requirements under assigned duties, a section
16 physical requirements?

17 A. All of them.

18 Q. They all require physical requirements?

19 A. Uh-huh.

20 Q. But they're not set out here as to what
21 those requirements are?

22 A. Other than 11, the heavy lifting.

23 Q. Okay. Tell me what's physically required
24 in pulling customer orders.

25 A. Carrying, lifting, bending, squatting,

1 depending on the parts and where they're
2 located.

3 Q. And what you say depending on the parts,
4 meaning how big or how small the parts are?

5 A. Yes.

6 Q. And where they're located, meaning either
7 up on a shelves or on pallets in a truck --

8 A. Yes.

9 Q. -- in a warehouse? Yes?

10 A. Yes.

11 Q. Load and unload delivery trucks. What
12 physical requirements are required for that?

13 A. The same.

14 Q. All right. Accurately checking the stock
15 orders from branch and from vendors. What do
16 you need to do for that?

17 A. The same.

18 Q. Immediately inform manager of any
19 discrepancy. Obviously you have to walk over
20 and tell a manager?

21 A. Yes.

22 Q. Fill and maintain stock shelves. What's
23 required for that?

24 A. The same as 1, 2, and 3.

25 Q. Deliver parts as required using company

1 vehicle, that means sometimes you have to drive?

2 A. Yes.

3 Q. There is some answering phones, pulling
4 orders?

5 A. Yes.

6 Q. Operating forklift, we talked about that.
7 Housekeeping duties, what kind of housekeeping
8 duties?

9 A. Picking up skids, sweeping the floor,
10 whatever needs done.

11 Q. What do you mean by picking up skids?

12 A. If you have empty skid pallets on the floor
13 we stage them in a trailer for disposal.

14 Q. You got to bend down, pick them up, and
15 carry them?

16 A. Yes.

17 Q. Cleaning and straightening of shelves.
18 What's required for that?

19 A. The same thing. You have to move parts
20 around, face parts, bring old stuff to the
21 front.

22 Q. Do you have to climb ladders or stairs for
23 any of this?

24 A. Some, yes.

25 Q. So there is, these are just the written

1 descriptions of what's being done, but you're
2 telling us what the physical responsibilities
3 are?

4 A. Yes.

5 Q. All right, let's take a look at the
6 physical requirements on D-9. And I'm sorry,
7 Mr. Whitmire, I was a little confused by your
8 testimony when you were being asked as to the
9 lifting and carrying requirement. I believe you
10 said there was a 65 pounds is what's expected of
11 someone being able to lift on their own?

12 A. That's the minimum requirement.

13 Q. Okay, so 65, 70 pounds?

14 A. Yes.

15 Q. All right, and as far as occasional lifting
16 up to 150 pounds, somebody could lift 150
17 pounds?

18 A. Yes.

19 Q. On their own?

20 A. Yes.

21 Q. Unassisted?

22 A. Yes.

23 Q. Okay. So I think what I got a little
24 confused, and help me with this, is that when
25 you were testifying after these lifting and

1 carrying requirements, you kept on saying it's
2 based on the individual.

3 A. Yes.

4 Q. Okay. So that means you may have a
5 warehouse worker that can only lift fifty pounds
6 unassisted, and another warehouse worker that
7 could lift 140 pounds unassisted?

8 A. The warehouse workers can at least lift 65
9 pound.

10 Q. Okay. They have to lift at least 65
11 pounds?

12 A. Yes.

13 Q. And they have to carry at least 65 pounds?

14 A. Yes.

15 Q. Okay. Anything over that 65 pound mark is
16 really up to the individual?

17 A. Yes.

18 Q. I mean, there comes a point in time when
19 you want them to use judgement as to having an
20 assistant helping them?

21 A. Yes.

22 Q. Okay. So does the fact that someone can
23 lift up to 140 pounds, that's okay, that means
24 they can do it without somebody helping them?

25 A. Yes.

1 Q. Now, you also talked about forklifts, hand
2 trucks, carts, and pallet jacks. All right,
3 forklift obviously, that's where you sit in it
4 and you drive it, right?

5 A. Yes.

6 Q. Hand truck?

7 A. Is a two-wheeled dolly.

8 Q. What do you, how do you -- what's the
9 physical, physically what do I have to do the
10 use the hand truck?

11 A. Be able to pull it back and push it or pull
12 it.

13 Q. Walk with it?

14 A. Yes.

15 Q. Cart. What about a cart? What do you need
16 to do physically with a cart?

17 A. Be able to lift a product onto the cart and
18 push it?

19 Q. What's a cart look like? This is just for
20 my sake and the jury's sake just so I can get a
21 picture.

22 A. It's a four-wheeled cart. Some have two
23 shelves to it. It's probably 30 by 42, 40,
24 depending on the cart.

25 Q. Is it like a flatbed?

1 **A.** Yes.

2 **Q.** That's what I'm imagining, a handle with a
3 flatbed?

4 **A.** Yes, there's different style of carts, but
5 that's one of them, yes.

6 **Q.** And then you have one that has like two
7 shelves on it?

8 **A.** Yes.

9 **Q.** So you have to actually pick up the product
10 from somewhere and then put it onto the cart?

11 **A.** Yes.

12 **Q.** So that requires bending, squatting?

13 **A.** Yes.

14 **Q.** And you have to push that cart?

15 **A.** Yes.

16 **Q.** Pallet jack I think we talked about.
17 That's the same thing, you have to, it's a walk
18 behind?

19 **A.** Yes.

20 **Q.** You got to use both hands to operate a
21 pallet jack?

22 **A.** Yes.

23 **Q.** It's got the forks, so the product, you
24 have to again physically walk behind it?

25 **A.** Yes, or pull it.

1 Q. You worked in the warehouse, right?

2 A. Yes.

3 Q. How many hours are you on your feet
4 standing, standing, walking?

5 A. Probably 90 percent of it.

6 Q. So you're constantly moving around doing
7 something?

8 A. Yes.

9 Q. Climbing up stairs, coming down stairs,
10 walking around, walking to and from the main
11 building?

12 A. Yes.

13 Q. Now, you said you noticed yourself that
14 Mr. Shaw was having some difficulty.

15 A. Yes.

16 Q. Now, the time frame, was that before he was
17 sent for the exam?

18 A. Yes.

19 Q. Was that closer to that time frame?

20 A. I don't recall. It could have been a year
21 before that, I don't recall.

22 Q. Okay. Now, what was it -- strike that.
23 Let me ask it this way. When Mr. Hoffman came
24 to you, what did he say to you?

25 A. That Ricky had problems walking across the

1 parking lot, looked like he would barely make
2 it.

3 Q. And that's about eighty feet between those
4 two buildings?

5 A. Roughly, yes.

6 Q. Did that cause you concern?

7 A. Yes.

8 Q. Tell me why it caused you concern.

9 A. Because obviously he was in pain.

10 Q. And the fact that --

11 A. A lot of pain.

12 Q. Excuse me?

13 A. A lot of pain.

14 Q. All right, and the fact that he was in
15 pain, why was that a concern?

16 A. Because we cared about Ricky.

17 Q. And what was your concern about Ricky?

18 A. That he can't walk.

19 Q. And how would that, how did it impact with
20 his doing his job?

21 A. Because he could end up seriously hurting
22 himself.

23 Q. In what way?

24 A. He could drop a part on him.

25 Q. I'm sorry?

1 **A.** He could drop a part on him. He could drop
2 it on his toe. He could -- there's numerous
3 things that could happen.

4 **Q.** What about was there any concern with him
5 climbing up and down the steps?

6 **A.** Not to me, no.

7 **Q.** Do you know if he could climb or not?

8 **A.** Again after we sent him I heard that they
9 were giving him assistance so he didn't have to
10 go up and down the steps, which was fine with
11 me.

12 **Q.** Who did you hear that he was getting
13 assistance from?

14 **A.** Tim Kline.

15 **Q.** So after he was sent to be examined
16 Mr. Kline came to you and talked about what was
17 going on in that warehouse prior to the exam?

18 **A.** That, yes.

19 **Q.** What else did Mr. Kline tell you?

20 **A.** That was about it, that he was struggling
21 to walk.

22 **Q.** And you said that -- what about with regard
23 to other workers in the warehouse? Was there
24 concern for you as to Mr. Shaw's struggling to
25 walk?

1 **A.** well, yes.

2 **Q.** why was that a concern?

3 **A.** Because if he was on a forklift and not
4 able to move his knee and can't stop it, it he
5 could've ran into somebody or knocked a rack
6 over or there's numerous things that could
7 happen.

8 **Q.** How important is squatting in that job?

9 **A.** As important as any other one.

10 **Q.** You got to squat to pick up products?

11 **A.** Some, yes.

12 MS. SALTZ: I have no further questions.

13 THE COURT: Mr. Russo, anything further.

14 REDIRECT BY MR. RUSSO:

15 **Q.** Please, Your Honor. Mr. Whitmire, on
16 Exhibit Number 6, which is the warehouse worker
17 job description, you told counsel that in the
18 assigned duties that you would need to lift and
19 walk and bend, is that correct?

20 **A.** Yes.

21 **Q.** And that's this one?

22 **A.** Yes. I'm trying to find it here, I'm
23 sorry.

24 **Q.** That's okay. You said you would have to
25 lift and walk and bend, correct?

1 **A.** Yes.

2 **Q.** And that's not in that document, you're
3 just saying in essence these are the things you
4 probably would have to do to get that part of
5 the job done.

6 **A.** Yes.

7 **Q.** Now, if I have to lift something and walk
8 it, and you described to your counsel that you
9 would have to lift something and put it on the
10 cart so you could use the cart, correct?

11 **A.** Yes.

12 **Q.** Is it fair to say I could take a forklift,
13 lift the product to the level of the cart, and
14 slide it onto the cart?

15 **A.** Yes.

16 **Q.** And use the cart to walk?

17 **A.** Yes, you could.

18 **Q.** So it's not necessarily true that I need to
19 be able to bend, lift, squat or do all those
20 things, but if I took an item onto a forklift,
21 made it parallel to the cart, and slid it
22 across, I could get to the same point?

23 **A.** It depends on where the part's at.

24 **Q.** True.

25 **A.** We have narrow aisles that you can't get a

1 forklift into.

2 Q. True, but it's possible to do it the way I
3 described?

4 A. As long as you're not in a narrow aisle,
5 yes.

6 Q. On top of that counsel talked about hand
7 carts and the hand jack.

8 A. Uh-huh.

9 Q. The end result of all of these mechanisms
10 is to move something, correct?

11 A. Yes.

12 Q. And again assuming I'm not using a narrow
13 hallway, I could accomplish the same task from a
14 forklift?

15 A. Yes.

16 Q. Is there any prohibition that stops Ricky
17 Shaw from doing whatever he needed to do to move
18 an item?

19 A. No.

20 Q. Is there any prohibition that would stop
21 Ricky Shaw to use whatever method he could to do
22 the items that are assigned duties on this lift?

23 A. No.

24 Q. You talked about there was concern about
25 Ricky seriously hurting himself.

1 **A.** Yes.

2 **Q.** Did anyone ever report an incident to you
3 where Ricky was in danger of seriously hurting
4 himself?

5 **A.** Other than I believe he hit a pallet rack a
6 time or two.

7 **Q.** And that happens on a regular basis, right?

8 **A.** Yes.

9 **Q.** Did you ever see anything where Ricky was
10 in danger of seriously injuring himself?

11 **A.** No.

12 MR. RUSSO: I have nothing further, Your
13 Honor.

14 THE COURT: Anything further?

15 RE CROSS BY MS. SALTZ:

16 **Q.** I do, Your Honor. Mr. Whitmire, is it your
17 testimony that in performing the duties of a
18 warehouse worker in Warehouse B that Mr. Shaw
19 would rarely have to walk, stand, squat, lift,
20 and carry?

21 **A.** No, he could do all of them things.

22 **Q.** He would have to do all those things, so
23 the fact that counsel said couldn't he use a
24 forklift to do this and couldn't he use that --

25 **A.** He could use a forklift to lift it on the

1 cart. He'd still have to push the cart, walk
2 with the cart, and take it off the cart. I just
3 answered his question.

4 Q. Understood. I just wanted to make sure
5 that you weren't saying that that job could be
6 done completely sitting down?

7 A. No, it cannot.

8 MS. SALTZ: That's all I have, thank you.

9 MR. RUSSO: Nothing else, Your Honor.

10 THE COURT: And I have no questions.
11 You may step down. Thank you very much,
12 Mr. Whitmire.

13 THE WITNESS: Thank you.

14 THE COURT: Ladies and gentlemen, let's take
15 our afternoon break at this time. Please recall
16 my instructions that you refrain from any
17 conversations among yourselves about what you
18 have seen and heard so far in the courtroom.
19 You will have an opportunity to do that, but not
20 until final deliberation. We'll take a
21 15-minute break, let's reconvene at ten after
22 3:00 and we'll continue with the plaintiff's
23 case in chief. Ms. McKinney, you may escort the
24 jury. We're in recess until 3:10.

25 (Recess taken from 2:53 to 3:14 p.m.)

1 THE COURT: I understand from Ms. McKinney
2 that counsel had some scheduling matters that
3 you wanted to address or --

4 MR. CROCENZI: No, just a preliminary
5 procedure issue, Your Honor. I have Joseph
6 Sembrot from my office who will read the part of
7 Mr. Kline in the deposition transcript. We just
8 wanted to find out how we wanted to indicate
9 that on the record.

10 THE COURT: I'm happy to advise the jury as
11 to the fact that he'll simply be reading the
12 matter, reading the role of Mr. Kline for the
13 record.

14 MR. CROCENZI: Okay.

15 MR. RUSSO: We do, Your Honor, it seems as
16 though we have to read Mr. Kline's testimony
17 into the record, which we expect to take an
18 hour, we would be calling Mr. Kline next --
19 Mr. Sheldon, I'm sorry, after the deposition,
20 and Mr. Sheldon was released. So we either are
21 looking at on a break are going to be forced to
22 take our witnesses out of order.

23 MR. CROCENZI: Have him come back? He's
24 only in Carlisle.

25 THE COURT: Who released him?

1 MS. SALTZ: Well, the problem is, Your Honor
2 when counsel gave the line-up of their
3 witnesses, they indicated Mr. Hoffman,
4 Mr. Whitmire, Ms. Hoffman, and then the Kline
5 deposition, which would have taken up the entire
6 afternoon, followed by Mr. Sheldon tomorrow
7 morning, followed by Mr. Shaw, then they have
8 Mr. Kearn, and then followed by Dr. Walker.
9 That was the line-up that was given this
10 morning. So based on that line-up we weren't
11 getting to Mr. Sheldon today, and now I'm being
12 told that that was, they misspoke but
13 unfortunately didn't tell me that they had
14 misspoken or clarified it with me, and then
15 switched the order of Ms. Hoffman and Mr. Kline.

16 THE COURT: All right. Well, he's been
17 released. The bottom line is you shouldn't have
18 released him until we could have confirmed what
19 the schedule was, but he's no longer here. Can
20 he be recalled? Let's just have him called on his
21 cell phone and bring him back so we can get that
22 in.

23 MR. CROCENZI: Carlisle is only a half hour
24 away.

25 THE COURT: If this is going to take an hour

1 we'll get him here and we'll still be able to
2 accomplish this.

3 MS. SALTZ: I don't have a problem, Your
4 Honor. The only thing I ask is that as long as
5 I know what's, you know, if that's the way we're
6 going then I'm assuming we're going to begin
7 with Ms. Hoffman tomorrow morning.

8 MR. CROCENZI: Yes, that's fine. That's
9 correct.

10 MS. SALTZ: And then followed by Mr. Shaw,
11 Mr. Kearn, and then Dr. Walker.

12 MR. RUSSO: Dr. Walker.

13 MR. CROCENZI: We have Brenda -- wait, let's
14 make sure we have this right.

15 THE COURT: well, let's go off the record
16 for this, wes.

17 (Discussion held off the record.)

18 THE COURT: While we were off the record we
19 discussed the reading of Mr. Kline's deposition
20 transcript. It's my understanding that counsel
21 have agreed that the entire transcript can be
22 read into the record and that that will, and
23 that any objections that were raised on the
24 transcript can be withdrawn. Is that an
25 accurate statement of your understanding?

1 MR. CROCENZI: Yes, Your Honor.

2 MS. SALTZ: Yes, Your Honor.

3 THE COURT: And so when you get to the
4 portion where objections have been raised you're
5 simply going to skip over those objections, is
6 that correct?

7 MR. CROCENZI: No, we're going to read that
8 part of the testimony.

9 THE COURT: Oh, you're going to also read
10 the objections?

11 MS. SALTZ: No, no objections. Just the
12 portion of the testimony that at one point was
13 objected to that.

14 THE COURT: Oh, all right.

15 MS. SALTZ: So that will be read through
16 cleanly then.

17 THE COURT: All right. Essentially the
18 objections will be extricated from the reading.

19 MS. SALTZ: That is correct.

20 THE COURT: All right. Very good.

21 MR. CROCENZI: And I need to provide a
22 cleaner copy of the transcript for an exhibit
23 because right now we do have portions that are
24 marked "need ruling". Obviously now that the
25 objections have been withdrawn we can submit a

1 clean copy tomorrow.

2 THE COURT: All right. That would be fine.
3 Are you ready for the jury?

4 MR. RUSSO: Your Honor, Plaintiff's Exhibits
5 3 and 5 were admitted, published through ELMO.
6 We'd like to publish hard copies to the jury.
7 How would you like us to go about that given
8 that ELMO didn't lend itself to a three-page
9 document?

10 THE COURT: Well, if you were going to
11 publish them, Mr. Russo, you should have done it
12 while the witness was on the stand.

13 MR. RUSSO: Okay.

14 THE COURT: I don't want you to publish them
15 without a question pending or a witness on the
16 stand.

17 MR. RUSSO: We can publish them again with
18 Mr. Kline's testimony. They're all exhibits in
19 his deposition anyway.

20 THE COURT: Very well. Any objection?

21 MS. SALTZ: No objection, Your Honor.

22 THE COURT: All right. Ms. McKinney, would
23 you escort the jury? And, Ms. McKinney, do you
24 have those exhibits as being admitted?

25 COURTROOM DEPUTY: I do not. I have them as

1 introduced.

2 THE COURT: Yes, I have them as introduced
3 but not as admitted.

4 MR. RUSSO: Okay. Well, no, we didn't move
5 for any admissions.

6 THE COURT: Yes, I don't think any of the
7 exhibits have been admitted yet, and if you
8 intend to do that and use them in Mr. Kline's
9 deposition, then let's do it before we put
10 Mr. Sembrot on the stand. Okay?

11 MR. RUSSO: Yes.

12 (Brief pause.)

13 (Jury seated at 3:23 p.m.)

14 THE COURT: Please be seated. Ladies and
15 gentlemen, counsel and I met briefly after the
16 break and we are now going to proceed with the
17 reading of a deposition transcript. I think I
18 mentioned this in my preliminary instructions,
19 but this is for Mr. Kline, who is deceased, and
20 his testimony will be read into the record, and
21 the individual who is reading Mr. Kline's part
22 of the deposition transcript, we'll put him on
23 the witness stand, is Mr. Sembrot, he is with
24 Mr. Crocenzi's office, and he'll simply take the
25 witness stand and read those answers that were

1 given by Mr. Kline during the deposition when it
2 was taking place, and what is the date of the
3 deposition?

4 MR. CROCENZI: January 12th, 2010.

5 THE COURT: All right. January 12th, 2010.
6 As I said to you previously, it is sworn
7 testimony and you can accept it in the same
8 manner and fashion with which you would accept
9 testimony if it were being given live in the
10 courtroom. Mr. Sembrot, if you would like to
11 step forward?

12 MR. CROCENZI: Your Honor, would you like a
13 copy of the transcript?

14 THE COURT: No, that's not necessary, and
15 it's not necessary that Mr. Sembrot be sworn in.
16 Mr. Crocenzi, you may proceed.

17 MR. CROCENZI: Thank you.

18 (The deposition of Tim Kline was read into
19 the record beginning at 3:26 p.m.)

20 MR. CROCENZI: Your Honor, at this time we'd
21 like to publish plaintiff's exhibits?

22 THE COURT: Ladies and gentlemen, various
23 exhibits were introduced during the course of
24 this deposition. We would like to show them to
25 you so you're able to put the testimony in

1 context as it relates to the various exhibits,
2 and we've already discussed this with defense
3 counsel, Ms. Saltz has no objection, so you may
4 publish.

5 MR. CROCENZI: Your Honor, may I approach
6 the jury? I do have only two copies.

7 THE COURT: That would be fine.

8 MR. CROCENZI: Thank you.

9 THE COURT: Yes, ladies and gentlemen, if
10 you would please review them individually and
11 pass them along, we're just going to take a
12 break while you do this so that you're not
13 distracted from the deposition testimony as it
14 is being given. I think for the record we
15 should have a motion for their admission,
16 Mr. Crocenzi.

17 MR. CROCENZI: Thank you. I'll move for the
18 admission of P-1 at this time, Your Honor.

19 THE COURT: Both documents?

20 MR. CROCENZI: Right. Well, they're one and
21 the same.

22 THE COURT: That's right. Any objection,
23 Ms. Saltz?

24 MS. SALTZ: No objection.

25 THE COURT: All right. It is admitted.

1 (Brief pause.)

2 (Deposition continued at 3:38 p.m.)

3 MR. CROCENZI: Again I would like to publish
4 Plaintiff's Exhibit 2, please.

5 THE COURT: Any objection?

6 MS. SALTZ: No objection.

7 THE COURT: Would you move for its admission
8 as well?

9 MR. CROCENZI: Yes, I would move for
10 admission of Plaintiff's Exhibit 2.

11 THE COURT: Any objection?

12 MS. SALTZ: No, Your Honor. In fact I
13 believe there's two other performance
14 evaluations that --

15 THE COURT: Move them all in?

16 MS. SALTZ: Move them all in. We have no
17 objections to any of the performance
18 evaluations.

19 MR. CROCENZI: Thank you. I move for the
20 admission of P-1 through P-5, which are the
21 performance evaluations.

22 THE COURT: All right. They are all
23 admitted without objection.

24 MR. CROCENZI: Thank you.

25 THE COURT: To speed things along why don't

1 we after the first person gets through with 2004
2 we can move through --

3 MR. CROCENZI: Sure.

4 THE COURT: Or is that 2003?

5 JUROR: 2004.

6 THE COURT: 2004? Then we'll do 2005, and
7 you can read through that portion of the
8 transcript after we get through all of the
9 exhibits.

10 (Brief pause.)

11 MR. CROCENZI: I'm showing the jury P-3.

12 (Brief pause.)

13 MR. CROCENZI: P-4.

14 (Brief pause.)

15 MR. CROCENZI: And P-5.

16 THE COURT: And, ladies and gentleman, these
17 exhibits will be made available to you during
18 the time of final deliberations, so it's
19 probably not necessary that you make notes
20 regarding them.

21 (Brief pause.)

22 THE COURT: All right, Mr. Crocenzi, I
23 believe the jury has finished their review of
24 these exhibits. You may continue.

25 (Reading of the deposition of Tim Kline

1 continued at 3:48 p.m.)

2 MR. CROCENZI: That's it.

3 THE COURT: All right. Thank you very much.

4 MR. CROCENZI: I call Bryan Sheldon.

5 MS. SALTZ: He's here.

6 THE COURT: All right. Good afternoon,
7 Mr. Sheldon. If you would please step forward,
8 and the courtroom deputy will administer the
9 oath.

10 (Bryan Sheldon was called to testify and
11 was sworn by the courtroom deputy.)

12 COURTROOM DEPUTY: Please be seated and
13 state your full name for the record.

14 THE WITNESS: Bryan, B-R-Y-A-N, Sheldon,
15 S-E-H-L-D-O-N.

16 MR. CROCENZI: You'll have to give me a
17 second after all that reading, Your Honor.

18 (Brief pause.)

19 DIRECT EXAMINATION BY MR. CROCENZI:

20 Q. Thank you. Good afternoon, Mr. Sheldon.

21 A. Good afternoon.

22 Q. You are the corporate controller for
23 Cumberland Truck Equipment Company, is that
24 correct?

25 A. I am.

1 Q. How long have you served in that position?

2 A. Sixteen and a half years.

3 Q. Now, Cumberland Truck Equipment Company
4 sells truck parts, is that correct?

5 A. As well as heavy duty trucks and service
6 work on heavy duty trucks.

7 Q. In 2007 Cumberland Truck had over two
8 hundred employees all of its combined
9 operations, is that right?

10 A. That's correct.

11 Q. And you are engaged in business that takes
12 you across state lines, either you receive
13 product from other states or you're shipping
14 product out to other states?

15 A. Also correct.

16 Q. Part of your job duties in '07 as the
17 corporate controller, you supervised the human
18 resources department, is that correct?

19 A. Yes.

20 Q. Now, Brenda Hoffman was the director of
21 human resources in 2007, is that right?

22 A. Correct.

23 Q. You reported directly to the owners?

24 A. I did.

25 Q. I want to ask you just a few questions here

1 at the beginning concerning pay raises to
2 employees at Cumberland Truck, and pay raises
3 were given in general in 2007 of about 3.2
4 percent, is that right?

5 A. I wouldn't know the exact percentage, but
6 it sounds reasonable.

7 Q. In 2008 there was another pay raise in
8 general of about 3 percent?

9 A. Okay.

10 Q. Does that sound about right?

11 A. Yes, it certainly would.

12 Q. Cumberland Truck also had a 401-K matching
13 program in place in 2007?

14 A. That is correct.

15 Q. And do they continue to have that program
16 in place up to the present day?

17 A. We do.

18 Q. Can you explain to the jury how that
19 matching program works?

20 A. Certainly. It is of any employee who
21 decides to contribute to the 401-K program, we
22 match fifty cents on each dollar contribution up
23 to 6 percent of their salary or wages.
24 Therefore if somebody contributes 3 percent, we
25 would contribute a percent and a half. If

1 somebody contributes 6 percent, we would
2 contribute 3 percent.

3 Q. Has that percentage changed at all from
4 2007?

5 A. No, it has not.

6 Q. You didn't supersize the warehouse
7 operations in Carlisle?

8 A. No.

9 Q. You didn't work with Ricky Shaw in
10 Warehouse B at the Carlisle location?

11 A. I worked in the Carlisle location, but I
12 did not work directly with Mr. Shaw.

13 Q. You were located in the corporate office
14 where Chuck Hoffman's office was located?

15 A. That's correct.

16 Q. Now, on occasion you would come over to
17 Warehouse B maybe once a week for a few minutes
18 to check on something or get information about
19 something, is that right?

20 A. That's correct. I had the responsibility
21 of overseeing our warranty department, and our
22 warranty department is located in Warehouse B.

23 Q. Now, during the time you came over for a
24 few minutes about once a week did you always see
25 Ricky Shaw doing his job at the warehouse?

1 **A.** No, not always.

2 **Q.** I want to turn your attention to February
3 of 2007. Did you have a meeting with Chuck
4 Hoffman and Pat Whitmire concerning Ricky Shaw's
5 employment with the company?

6 **A.** Yes.

7 **Q.** And during that meeting isn't it true that
8 Chuck Hoffman told you that he observed
9 Mr. Hoffman struggling to walk across a parking
10 lot?

11 **A.** It was either Chuck or Pat that brought it
12 to my attention. I'm not positive which one.

13 **Q.** And isn't it true that Chuck Hoffman told
14 you that he observed Ricky using a cane when he
15 saw him walking across the parking lot?

16 **A.** That is what was discussed, yes.

17 **Q.** After hearing this information from Chuck
18 Hoffman or Pat Whitmire did you form an
19 impression that Ricky was going to have
20 difficulty performing his job?

21 **A.** I wasn't sure what Ricky was dealing with,
22 but it would seem to me that somebody who was
23 using a cane to traverse a parking lot would
24 certainly have trouble carrying objects in our
25 warehouse, yes.

1 Q. And you were concerned that Ricky was a
2 danger to himself or others in the warehouse?

3 A. Well, that's certainly a possibility.

4 Q. Did you also have a conversation with Tim
5 Kline about that time?

6 A. Not immediately, no.

7 Q. Did Mr. Kline report to you anything about
8 Ricky using a cane to operate a forklift?

9 A. Not at that time.

10 Q. When did he mention that to you?

11 A. It's my recollection that Mr. Kline
12 mentioned that to me after Ricky was put on
13 medical leave.

14 Q. So after the February 26th, '07 examination
15 at Concentra?

16 A. Yes, after that examination.

17 Q. And it's your testimony that Mr. Kline came
18 to you after that examination and said that
19 Ricky was using a cane to operate a forklift?

20 A. That is my recollection, yes.

21 Q. Prior to these meetings in February 2007
22 with Pat, the meeting with Pat Whitmire and
23 Chuck Hoffman, had you received any complaints
24 of Ricky's job performance?

25 A. Me personally?

1 Q. Yes.

2 A. No.

3 Q. Did you receive any reports about Ricky
4 dropping items in the warehouse?

5 A. We have in our personnel file which I
6 oversee obviously we have some incident reports
7 that have reported that, but they weren't
8 brought to me, you know, to my attention and
9 said Ricky is doing a bad job or anything like
10 that.

11 Q. Isn't it true that the incidents that you
12 are referring to were items where Ricky had an
13 accident with the forklift?

14 A. I believe that's one of them. I mean, I
15 don't recall those, they really didn't factor
16 into any of the decision making that we made.

17 Q. Fair enough. Isn't it true that other
18 employees in the warehouse have had accidents
19 involving a forklift?

20 A. Absolutely, yes.

21 Q. Did any employee report to you by February
22 2007 that Ricky was having difficulty lifting
23 anything?

24 A. No.

25 Q. Anybody report any incidents that Ricky was

1 a danger to himself while working in the
2 warehouse?

3 A. No.

4 Q. Any reports that Ricky was a danger to
5 somebody else in the warehouse?

6 A. No.

7 Q. In fact you thought highly of Ricky, you
8 thought he was an exemplary employee?

9 A. I did.

10 Q. He actually had better knowledge than Tim
11 Kline about how that warehouse should be
12 operated?

13 A. That's correct.

14 Q. He was efficient?

15 A. Yes.

16 Q. A valuable employee of Cumberland Truck?

17 A. Yes.

18 Q. Now, after your meeting with Chuck Hoffman
19 and Pat Whitmire you made a decision to send
20 Ricky for a physical examination, is that right?

21 A. That's correct.

22 Q. Now, prior to making the decision to send
23 Ricky to Concentra Medical Center did you meet
24 with Ricky to discuss your concerns?

25 A. I did not meet with Ricky, no.

1 Q. Did you discuss with Ricky any -- well, let
2 me strike that. Let me talk first about
3 Concentra Medical Center. Cumberland Truck has
4 a relationship with Concentra Medical Center
5 where you send employees or prospective
6 employees to them for pre-employment physicals,
7 is that right?

8 A. That's correct.

9 Q. Do you also send employees to Concentra if
10 they're injured on the job? Concentra is part
11 of your panel physician where they, the employee
12 needs to treat with Concentra?

13 A. That is also correct.

14 Q. Do you also send employees to Concentra for
15 drug and alcohol screenings?

16 A. Yes, we do.

17 Q. Now, how long have you had this type of
18 relationship with Concentra?

19 A. Honestly I don't know when Concentra, but
20 it's been for several years. Obviously we still
21 use them, so it's been a long-term relationship.

22 Q. I'm going to show you what has been
23 identified as Exhibit 9, Plaintiff's Exhibit 9.

24 A. Okay.

25 (Brief pause.)

1 Q. Have you had a chance to look at that?

2 A. Uh-huh.

3 Q. Okay. This is the form that was sent with
4 Mr. Shaw when he went for the physical
5 examination at Concentra on February 26th, 2007,
6 is that right?

7 A. This is the completed form that was
8 returned actually.

9 Q. Okay.

10 A. Not -- the form was blank when it was sent
11 except for the first section was filled out.

12 Q. Okay. Other than the handwriting that
13 somebody at Concentra put on there, that was the
14 form that was sent?

15 A. That looks like it, yes.

16 Q. Okay. Now, this form was developed in 2003
17 or 2004 as part of an unrelated worker's
18 compensation case, is that right?

19 A. Yes.

20 Q. Your worker's compensation carrier was
21 involved in helping to draft that document for
22 Cumberland Truck, is that right?

23 A. Well, no, they didn't help to draft the
24 document for Cumberland. When we were dealing
25 with a worker's comp issue a form similar to

1 this one came to us from the worker's comp
2 company to be filled out for an evaluation of
3 that particular injury. We then modified the
4 form and adopted it and used it for a cases like
5 these for when we sent somebody for a job
6 analysis or evaluation.

7 Q. Looking at the physical requirements which
8 start on page 1 and continue through page 2 of
9 the document?

10 A. Uh-huh.

11 Q. Did you provide any input into the physical
12 requirements listed on this job --

13 A. No, sir.

14 Q. -- description? Do you know who did?

15 A. It would have been developed by our parts
16 department headed up by Chuck Hoffman.

17 Q. To the best of your knowledge did anybody
18 at Concentra solicit the input from any of the
19 warehouse workers about the physical
20 requirements listed on this job analysis form?

21 A. I'm sorry?

22 Q. Sure, I can repeat that again. To the best
23 of your knowledge did anybody at Cumberland
24 Truck ask the employees in the warehouse for
25 their input on the physical requirements for the

1 job which should be listed on this job analysis?

2 A. Ask our general staff for the knowledge?

3 Q. Yes.

4 A. Or for their input on this?

5 Q. Yes.

6 A. I wouldn't know, but I don't believe so.

7 Q. Did you ever, did anybody at Cumberland
8 Truck consult Ricky Shaw about what should be
9 included on the physical requirements of this
10 job analysis form?

11 A. No, sir, I don't believe so. Not to the
12 best of my knowledge.

13 Q. Do you know whether anybody at Cumberland
14 Truck gave the completed job analysis form when
15 you're done modifying it, did they ever give it
16 to Ricky Shaw?

17 A. No, sir.

18 Q. Did they give it to any warehouse worker?

19 A. Not prior to him being involved in the
20 evaluation.

21 Q. Yes.

22 A. Okay.

23 Q. So prior to February 26th, '07 it's your
24 testimony that Ricky Shaw did not receive this
25 job analysis form?

1 **A.** That's correct.

2 **Q.** And it's your testimony also that no other
3 warehouse worker received the completed job
4 analysis form?

5 **A.** Well, this would be part of physical exams,
6 so it wasn't developed for Ricky's case. It was
7 developed prior to that. So I would feel
8 certain that this form was seen by other
9 warehouse employees along the way prior to Ricky
10 receiving the form.

11 **Q.** If they had to get some kind of medical
12 evaluation?

13 **A.** That's correct.

14 **Q.** But in general it's not included in any
15 kind of employment packet or personnel manual
16 that the employee gets upon hire?

17 **A.** No.

18 **Q.** Okay. Did you direct Brenda Hoffman to
19 tell Mr. Shaw on February 26th, 2007 that he had
20 to go to Concentra Medical Center for the
21 evaluation?

22 **A.** I don't know the exact date, but yes, that
23 was part of this event process.

24 **Q.** Okay. So the chain of command was that
25 you made the decision, then you instructed your

1 subordinate Mrs. Hoffman to then instruct Ricky
2 to go for the exam?

3 A. That is correct.

4 Q. Okay. Did you meet with Ricky at some
5 point after he returned from the Concentra
6 medical examination on February 26th?

7 A. I don't believe that I met with Ricky until
8 sometime after that. I did not go over the
9 evaluation with Ricky, or I don't remember going
10 over the evaluation with Ricky immediately when
11 he came back.

12 Q. Would it be correct that you met with Ricky
13 two days later on February 28th, 2007?

14 A. I know that I met with Ricky the date that
15 he came in to work to start work after we had
16 put him on medical leave, yes.

17 Q. Did you give Brenda Hoffman any
18 instructions after Ricky went to the Concentra
19 medical examination?

20 A. How so?

21 Q. Well, how did you get the report from
22 Concentra Medical Center after the physical
23 examination?

24 A. I received a report I believe from Brenda
25 Hoffman.

1 Q. Okay. So when you said that you, the
2 company put Ricky on medical leave, isn't it
3 true that you instructed Brenda Hoffman to offer
4 Ricky family medical leave?

5 A. Absolutely.

6 Q. And you also instructed her that Ricky
7 should, needs to apply for short-term disability
8 benefits?

9 A. That would be my recommendation, yes.
10 I can't force him to ask for short-term
11 disability.

12 Q. Two days later you said Ricky then came
13 back to work?

14 A. He came in and clocked in and started
15 working in Warehouse B, yes.

16 Q. Do you know how long he worked before you
17 stopped him from working?

18 A. Honestly I don't. I don't think he was
19 working more than about a half an hour.

20 Q. Isn't it true that Ricky was upset that
21 Cumberland Truck was no longer allowing him to
22 work in Warehouse B?

23 A. Absolutely, that's true.

24 Q. And isn't it true that Ricky during that
25 meeting told you he was physically able to do

1 his job as a warehouse worker?

2 A. Yes, Ricky's opinion was that he was able
3 to do the job.

4 Q. And isn't it true that during that meeting
5 Ricky told you that why are you bringing this
6 issue up now when he had been working for years
7 at Cumberland Truck?

8 A. It is true he asked that question.

9 Q. Did he also tell you that by not allowing
10 him to work he feared that his physical
11 condition would get worse?

12 A. Also true.

13 Q. He also told you during this meeting that
14 because of his eating habits and his activities
15 that if he had a sedentary lifestyle, by not
16 working his condition would get worse?

17 A. Well, that's a choice. Yes, sir.

18 Q. And you in fact were surprised by Ricky's
19 reaction that he wanted to continue working at
20 Cumberland Truck instead of taking the
21 short-term disability?

22 A. Yes, sir, quite surprised.

23 MR. CROCENZI: That's all I have. Thank
24 you.

25 THE COURT: Ms. Saltz, any examination?

1 MS. SALTZ: Yes, Your Honor, thank you.

2 CROSS EXAMINATION BY MS. SALTZ:

3 Q. Let's pick up that last question. Why were
4 you surprised?

5 A. Well, I was surprised because I had
6 personally observed Ricky trying to traverse a
7 parking lot and having great physical difficulty
8 and apparent pain in doing so. When he's
9 offered a company paid short-term disability
10 policy to improve health and well-being, I was
11 quite surprised that he didn't take advantage or
12 didn't want to take advantage of that program.

13 Q. And I believe, Mr. Sheldon, you testified
14 that you cannot force an employee to go out on
15 disability.

16 A. No.

17 Q. And that's a benefit that's offered by the
18 company?

19 A. That is a benefit, yes, it is a company
20 paid benefit we provide for all of our
21 employees.

22 Q. I'm going to take you back to the beginning
23 of the situation, start filling in some blanks
24 without just a yes or no.

25 A. Okay.

1 Q. Could you explain to the jury how you came
2 -- well, let me strike that. Let me ask this
3 question first. Did you yourself observe
4 Mr. Shaw having difficulty?

5 A. After I had the conversation with Pat and
6 Chuck I did pay attention when I saw Ricky
7 working as to how he moved about and utilized
8 his cane on our property, yes.

9 Q. Okay, and then once Mr. Hoffman and
10 Mr. Whitmire came to you, Mr. Hoffman told you
11 what he saw, then you started observing
12 yourself?

13 A. Yes.

14 Q. Can you explain to the jury the process
15 after that point. What did you -- I take it you
16 took the lead on going forward in trying to
17 decide how to handle the situation?

18 A. Right. This is an unusual circumstance.
19 I mean, we have an employee who's been a
20 long-term employee, a respected member of our
21 organization, and he's obviously having physical
22 difficulties. At that point how do you deal
23 with that? You know, he's -- it's not something
24 that happened immediate and we weren't sure what
25 he was dealing with. I mean is he dealing a

1 bout of gout or is he dealing with something
2 more serious? There are lots of rules out
3 there, HIPAA and FMLA and all kinds of medical
4 rules, and even the owners of our company are
5 not allowed to have employee medical records at
6 this date, you know, you can't discriminate
7 against anybody based on medical records and so
8 on. So that information is held very tightly
9 and it's very secretive in today's employment
10 process.

11 Q. Let me stop you right there and then I'll
12 let you continue. At any time prior to
13 Mr. Hoffman coming to you with Mr. Whitmire did
14 Ricky ever come to you, Mr. Shaw come to you and
15 disclose to you that he had some kind of medical
16 issue or condition?

17 A. Only when he was originally hired and he
18 was involved in a worker's comp incident, I
19 believe it was in 2000, where a brake drum I
20 believe struck his shin, I'm not sure if it was
21 right or left, and he had to have some time off
22 work for that particular incident, and then he
23 came back under some restricted duties for a
24 little while and eventually he was released to
25 full duties.

1 Q. Did he come back with a release from a
2 physician saying that he could come back to work
3 with restrictions?

4 A. Yes.

5 Q. And did you accommodate those restrictions
6 based on the doctor telling you what those
7 restrictions had to be?

8 A. Yes, we did.

9 Q. And then you worked with him to get him to
10 full duty?

11 A. Yes.

12 Q. And he did get there at some point?

13 A. Yes.

14 Q. So other than that as he moved closer to
15 the end of 2006/2007, were you aware of any
16 other medical conditions that Mr. Shaw had?

17 A. No.

18 Q. Now, at any time did he ever ask for any
19 accommodations, putting aside the worker's comp
20 injury?

21 A. No.

22 Q. And you explained that after you now you
23 had your own observation, Mr. Hoffman and
24 Mr. Whitmire came to you, what did you do next?

25 A. What we did was we decided to send --

1 actually we consulted our attorney. We have a
2 group of attorneys here in Harrisburg that we
3 consult with when we get into issues that we
4 don't know exactly how to handle. So frankly
5 Brenda and I called the attorney and explained
6 the situation and got --

7 THE COURT: Hold on. Hold on.

8 MR. CROCENZI: I'm going to object at this
9 point, Your Honor.

10 Q. Don't tell us what the attorney said.

11 A. Right, I understand, but we got his opinion
12 on the matter.

13 MS. SALTZ: Okay.

14 MR. CROCENZI: Well, Your Honor, I'm even
15 going to object to any of that testimony.

16 MS. SALTZ: I'm moving away from that, Your
17 Honor.

18 THE COURT: Okay.

19 MR. CROCENZI: And the reason is because
20 throughout this case and in Mr. Shaw's
21 deposition the defense asserted the attorney
22 client privilege, and so therefore they can't
23 rely now upon advice of counsel to exonerate
24 themselves.

25 THE COURT: All right. Very well. We're

1 going to move on.

2 BY MS. SALTZ:

3 Q. We're going to move on.

4 A. Okay.

5 Q. Now, did you meet with Brenda to discuss
6 the situation with her?

7 A. Right.

8 Q. Okay.

9 A. I met with Brenda.

10 Q. I mean Ms. Hoffman.

11 A. Right.

12 Q. The two of you decided to send Mr. Shaw for
13 an exam?

14 A. That's correct.

15 Q. Now, Concentra is the, is an independent
16 facility?

17 A. Concentra is an independent facility.

18 Q. It's not owned by Cumberland?

19 A. No. We don't own them. We don't invest in
20 them. We don't have any shares or any stocks or
21 anything but a relationship where we utilize
22 them for medical reasons.

23 Q. Okay, and at the time that Mr. Shaw was
24 sent did you have any knowledge, perception,
25 idea as to whether or not he would be able to do

1 his job?

2 A. I mean, I observed him using a cane to
3 walk. So I had some idea that he was dealing
4 with a medical issue or he wouldn't have gone.
5 Aside from that I didn't know what he was
6 dealing with. I had no indication of whether he
7 was dealing with a temporary situation or a
8 permanent one.

9 Q. Did you have any idea as to whether or not
10 he'd be able to come back to work after that
11 exam?

12 A. No, I did not.

13 Q. Now, after his examination I believe you
14 testified that it was Ms. Hoffman that reported
15 to you what the results were?

16 A. That's correct.

17 Q. Did you ever see the actual report itself?

18 A. This job analysis report? Yes.

19 Q. As completed by Concentra? Don't tell me
20 what's on it.

21 A. That's correct.

22 Q. As completed by Concentra?

23 A. That is correct.

24 Q. What happened next?

25 A. Well, we decided that based upon what was

1 on the evaluation that Mr. Shaw was not able to
2 perform the job duties that he had been assigned
3 to do, and I instructed Brenda to put him on
4 medical leave until he was able to come back
5 with restrictions or else-wise.

6 Q. Now, have you, has Cumberland ever put
7 other employees on medical leave?

8 A. No, not to the best of my knowledge. I
9 mean, other than if somebody came to us first,
10 you know, and said, "I have a particular
11 difficulty and, you know, I need to have
12 restrictions or, you know, I need to have
13 accommodations," but this is the reverse effect,
14 you know. We initiated the process. In every
15 other case I've ever dealt with the employee has
16 initiated the process.

17 Q. So it was unusual in that regard?

18 A. Very unusual.

19 Q. Okay. So now when Mr. Shaw was placed on
20 medical leave he still had a job?

21 A. Yes, absolutely.

22 Q. And what was Cumberland's intent?

23 A. To get him back as quickly as possible
24 because he was a --

25 Q. Because he was a good employee?

1 **A.** Yes.

2 **Q.** And Cumberland tries to keep good
3 employees?

4 **A.** They're hard to find.

5 **Q.** Now, you testified that a couple of days
6 later he came back on his own to work. He was
7 told he was on medical leave.

8 **A.** Uh-huh.

9 **Q.** And to take that time to deal with whatever
10 the situation was.

11 **A.** That's correct.

12 **Q.** Now, at that time did you know what the
13 problem was?

14 **A.** No.

15 **Q.** You still did not know?

16 **A.** No, I did not know.

17 **Q.** You didn't know whether it was temporary or
18 how long it would take to resolve or when he
19 could come back?

20 **A.** I did not know.

21 **Q.** So a couple of days later he comes back and
22 clocks in, you didn't even know he's clocking
23 in?

24 **A.** That's correct.

25 **Q.** What happened after you discovered that he

1 had clocked in to work?

2 A. I asked I believe it was Brenda, but I
3 asked somebody other than myself to bring him
4 over to the conference room so we could sit down
5 and talk about it, but we needed to stop him
6 from working as he was on medical leave.

7 Q. Before we get to that conversation, what
8 were you -- let me strike that and ask it this
9 way. Did you have concerns as to why he could
10 not continue working in the warehouse?

11 A. What do you mean concerns?

12 Q. Based on his, based on the report back from
13 Concentra why you would not let him work in that
14 warehouse.

15 A. Based upon the report he was not able to
16 perform the duties as assigned, and frankly
17 based upon the report I felt as though he could
18 either injure himself or injure a coworker.

19 Q. Did you meet with Mr. Shaw after he was
20 told to stop working?

21 A. I did.

22 Q. Was it just you and him in that room?

23 A. I believe it was him, myself, and Brenda,
24 Ms. Hoffman.

25 Q. Here you're free to say what Mr. Shaw says.

1 Tell the jury the conversation as it unfolded
2 between you and Mr. Shaw.

3 A. Obviously Mr. Shaw was quite upset that he
4 was pulled off the job and he expressed to me
5 that it would be my fault, Cumberland's fault,
6 if he continued to get worse medically,
7 physically, because the only exercise he got was
8 the exercise that he performed while he was
9 working in our warehouse, that he lived a
10 sedentary lifestyle outside of our warehouse,
11 and he enjoyed food and the fact of the matter
12 was that he was only going to get worse if he
13 weren't able to continue to work at our facility
14 during the day.

15 Q. And how did you respond to that?

16 A. I said, "Ricky, it's your choice, you know,
17 your lifestyle outside of Cumberland is a
18 choice, but we can't have you working inside the
19 warehouse in, with the current restrictions or
20 the performance problems that we have here,"
21 performance being the inability to move around
22 physically.

23 Q. Did he ever ask for any accommodations?

24 A. No.

25 Q. Did he ever suggest anything to you --

1 **A.** Not.

2 **Q.** -- at this, at this conversation as to how
3 he could do his job?

4 **A.** No. He said that he felt as though he was
5 doing his job and that we were being ridiculous
6 for taking him off work.

7 **Q.** Did he discuss with you anything with
8 regard to or did you bring up to him what the
9 doctor said?

10 **A.** We had his copy of the evaluation, yes.

11 **Q.** And did he disagree with that?

12 **A.** To some extent yes, but not -- he admitted,
13 wholeheartedly he admitted that he had problems
14 with mobility and that his mobility would only
15 continue to get worse if he weren't able to work
16 in the warehouse.

17 **Q.** Did you at any time discuss with him having
18 his own doctor examine him or another doctor
19 examine him?

20 **A.** Yes.

21 **Q.** Tell the jury about that.

22 **A.** As part of this conversation I offered to
23 reevaluate Ricky at any point where he thought
24 he would be able to pass the physical exam
25 enough to even give us restrictions that we

1 could work within. I offered to allow him to
2 work with Concentra and his own physician,
3 because at that point he expressed that his own
4 physician he felt would give him a clean bill of
5 health, okay, and to pick another doctor if they
6 needed, you know, if he felt it was necessary to
7 go to an independent doctor that both
8 parties could agree upon, not just somebody, you
9 know, not his own physician, but somebody
10 independent of Concentra and his own physician
11 if he felt that would be necessary to get the
12 job done, you know, to get a restriction that we
13 could work within or a clean bill of health.

14 Q. Did he ever do that?

15 A. He did take us up on getting a follow-up
16 physical exam, and I'm not sure if that was with
17 Concentra or with somebody else, and I believe
18 that was several months after this meeting, but
19 not immediately, no.

20 Q. Did you talk to him also, did you and he
21 ever discuss about the physical requirements?
22 There's been a lot of testimony in the case as
23 to what the physical requirements are of that
24 job. Did you discuss with him what those
25 physical requirements were?

1 **A.** No, not specifically, not in detail.

2 **Q.** Did you talk with him about modifying those
3 if he felt they weren't accurate in any way?

4 **A.** I offered that if he felt that those, that
5 these things were, you know, prohibitive or that
6 they were unreasonable, that we would certainly
7 look at each one individually and -- but he
8 didn't say that any one particular requirement
9 on the sheet was of, you know, concern. He just
10 simply thought that the whole sheet was not just
11 for what he was doing in the warehouse.

12 **Q.** Did he give, offer you anything in terms of
13 why it wasn't just anything specific in terms of
14 what --

15 **A.** No, he didn't, he didn't pick out any
16 particular one, and I did offer to go through
17 them and modify them with not just simply
18 because that was what Ricky's opinion was, but
19 modify them in a group setting with everybody
20 and we could agree upon different terms if these
21 weren't the accurate ones. I mean, I wasn't
22 involved in doing this evaluation, but I could
23 get the parties together and have the authority
24 to get the parties together to openly discuss
25 every one of the details.

1 Q. Did you talk to him about other possible
2 employment within Cumberland?

3 A. Not at this point.

4 Q. That was a --

5 A. But that was a, that was a separate meeting
6 later, yes.

7 Q. So after this meeting where you had -- how
8 did you leave it? How was the meeting finally
9 left?

10 A. Well, we didn't part, he was not very happy
11 when we parted that meeting. He thought we were
12 being frankly ridiculous, and I simply ended the
13 meeting and told him that after he felt as
14 though he could pass the physical examine, you
15 know, he could certainly take another physical
16 exam that the company would pay for.

17 Q. Did you meet with him again?

18 A. It was several weeks to two months later
19 when, yes, when Ricky came in after a letter,
20 after I received a letter, I made a phone call
21 to Ricky, and yes, we did have an additional
22 meeting.

23 Q. You received a letter from him.

24 A. I received a letter from him, yeah.

25 Q. Asking for a meeting?

1 **A.** I don't remember what was in, I honestly
2 don't remember. I remember receiving the
3 letter, but I don't remember exactly what was in
4 the letter.

5 **Q.** And who was at that meeting?

6 **A.** I believe just Ricky and I.

7 **Q.** Okay, and what went on in that meeting if
8 you could tell the jury?

9 **A.** We discussed what Ricky would be able to do
10 for the company, if he wasn't able to do the
11 warehouse position were there other jobs that
12 could be done, and Ricky put his hands out to me
13 and he said, "Look at these hands. These are
14 not hands that can type on a computer. These
15 are not hands that can do desk work." He said,
16 "I want my warehouse job back."

17 **Q.** And at that point he still had not received
18 medical clearance to return to work?

19 **A.** That's correct.

20 **Q.** How did that meeting end?

21 **A.** On better terms than our first meeting,
22 than the previous meeting ended, but still Ricky
23 felt as though he should be allowed back in the
24 warehouse and back doing the job that he was
25 doing before the way he was, felt that he was

1 doing it, you know, previously. His physical
2 health at that particular juncture, I mean he
3 came in with a cane again. He was obviously,
4 his mobility hadn't improved from, you know, in
5 moving around the office space. So I didn't
6 feel though there was really much else to talk
7 about when, you know, after the incident with
8 "look at my hands."

9 Q. How long did you keep his job open for?

10 A. I believe from February I think it was
11 September that we filled his position and sent
12 him a letter stating as such.

13 Q. And who was working that position in the
14 interim? Did you have anybody replacing him
15 during that period of time?

16 A. You know, that would be part of the
17 operations peoples' jobs. I know that we were
18 shipping parts the whole time, so I didn't
19 really deal with how Ricky's duties were covered
20 in that area.

21 Q. If Mr. Shaw had gotten a medical clearance
22 to come back to work even with accommodations,
23 would you have taken him back?

24 A. Yes.

25 Q. And when you terminated his employment in

1 September was he invited to reapply back to the
2 company again?

3 A. He was.

4 Q. At any time?

5 A. Yes.

6 Q. Would you take him back today day if you
7 could?

8 A. My vote would be to take him back. In my
9 opinion he was a very good employee.

10 Q. So as long as he could do the physical
11 aspects of the job you'd take him back today?

12 A. I would, yes.

13 MS. SALTZ: I have no further questions.

14 THE COURT: Mr. Crocenzi?

15 REDIRECT BY MR. CROCENZI:

16 Q. Did you ever give Ricky Shaw any paperwork,
17 paperwork that indicated he was on a medical
18 leave of absence?

19 A. Yes.

20 Q. What exactly did you give him?

21 A. I didn't personally give it to him.

22 Q. Okay. What did your department give him?

23 A. FMLA paperwork. Paperwork to sign up for
24 the disability program that Cumberland Truck
25 provided. Anything else, any of the standard

1 forms that were part of that event process.

2 Q. Okay. You told us that in your opinion
3 short-term disability is optional for an
4 employee, is that right?

5 A. That's correct. They don't have to sign
6 up.

7 Q. And FMLA is optional, too, obviously?

8 A. Yes. You have to sign up, you have to
9 request FMLA leave.

10 Q. Was there anything put in his personnel
11 file that indicated Ricky Shaw is on medical
12 leave?

13 A. I don't know if there's, that terminology
14 appears anywhere in his personnel file.

15 Q. Now, you testified that you had some
16 concerns about asking Ricky about his physical
17 condition. Now, I understand your concern was
18 that you thought that because of privacy you
19 couldn't ask about his diagnosis. In fact, you
20 said, "I really still don't know what his
21 medical diagnosis was," am I right?

22 A. I still today don't know what his diagnosis
23 was.

24 Q. Isn't that different, Mr. Sheldon, rather
25 than asking one of your valuable employees,

1 "What's going on, Ricky? Having trouble doing
2 your job?" Couldn't you have asked him that?

3 A. I don't feel as though it's my place to do
4 that, no, and I haven't done that with any
5 employee, nor do I think I would in the future.

6 Q. Okay. Well, this guy you've already
7 claimed was a valuable employee, you'd want him
8 back if he could pass his physical examination,
9 and yet you're telling us that you didn't care
10 enough to go up to him and say, "Ricky, I've
11 noticed you might be having some problems. Do
12 you want to talk about it or is there something
13 we can do for you?" You didn't do that, did
14 you?

15 A. It's not a matter of not caring.

16 Q. But you didn't do it, did you, Mr. Sheldon?

17 A. No, nor in the future do I believe I would
18 do that.

19 Q. And you also mentioned that after you got
20 the report from Concentra in February of 2007
21 you thought that Ricky was a danger to himself
22 and others. In fact, you had formed that
23 opinion even before you sent him for that
24 physical exam in February of 2007, right?

25 A. I didn't form any opinion.

1 Q. Didn't you tell us earlier that you thought
2 based on what Mr. Hoffman was telling you that
3 Ricky could be a danger to himself and others in
4 that warehouse?

5 A. What I thought was that we had to get to
6 the bottom of why an employee who is responsible
7 for carrying and lifting and moving heavy
8 objects was unable to walk across the parking
9 lot without the use of a cane.

10 Q. Right, and part of your concern was that
11 Ricky could be a danger to himself and others
12 because there are heavy parts in that warehouse,
13 right?

14 A. That is certainly a concern.

15 Q. During this second meeting with Ricky I
16 think that you said occurred after September of
17 '07, just before you sent the letter out to him
18 terminating his employment?

19 A. I don't believe it was as far as September.
20 I think that was June time frame.

21 Q. June of '07?

22 A. Somewhere in there, yes.

23 Q. And did you offer him a job at all during
24 that meeting?

25 A. I asked Ricky what he thought he would be

1 able to do aside from the warehouse position.
2 Yes, I was prepared to talk to him about doing
3 something else for Cumberland Truck Equipment
4 Company.

5 Q. Did you offer him a job during that
6 meeting?

7 A. There was no job to be offered. When I
8 don't even know what he feels as though he is
9 able to do outside the warehouse position, I
10 can't offer a job that's yet I don't know the
11 parameters for.

12 Q. Isn't it true that there was no vacant
13 position at Cumberland Truck in June of 2007
14 that Ricky was qualified to do?

15 A. I don't know if there was a job or was not
16 a job available at that particular juncture,
17 because we never got that far.

18 Q. Did you interact with your attorneys in
19 providing a response to the EEOC when Mr. Shaw
20 filed that charge?

21 MS. SALTZ: Objection.

22 THE COURT: Okay. Please approach.

23 (Side bar at 4:53 p.m.)

24 MS. SALTZ: The objection is you cannot
25 bring in the EEOC documents, response documents,

1 into the case, and I would have done the
2 research had I known in advance that this was
3 going to be an exhibit. I mean, it's not being
4 used for impeachment. It is not --

5 THE COURT: Well, I think it is being used
6 for impeachment.

7 MR. CROCENZI: That's what I'm using it for
8 because I want to see if Mr. Sheldon
9 communicated with the attorneys and provided
10 information and a response, and in this response
11 it says there were no vacant positions at CTE.

12 MS. SALTZ: First it would have to be
13 established by foundation that he wrote this
14 response --

15 THE COURT: Or contributed.

16 MS. SALTZ: -- or contributed to it, and
17 once that's established then you can get to the
18 next step, but not without that, and if that's
19 why you're using it then I don't have a problem
20 with it, but I don't want the reference to the
21 EEOC, you know, to the extent that --

22 THE COURT: Why don't you just say agency
23 proceedings. Okay?

24 MS. SALTZ: Thank you, Your Honor.

25 THE COURT: You bet.

(Side bar concluded at 4:54 p.m.)

BY MR. CROCENZI:

Q. Did you work with your corporate attorneys and provide any information in connection with agency proceedings?

A. I did.

Q. And in fact your attorneys were McNees, Wallace & Nurick, is that right?

A. That's correct.

Q. And with the agency proceedings your company had to provide a response to the agency, right?

A. I would assume so, yes.

Q. And so as part of that process you were giving information to your attorneys and helped formulate a response for the agency proceedings?

A. We would have to exchange information, certainly.

MR. CROCENZI: Okay. Well, in a letter from McNees, Wallace & Nurick to the agency, I'd like you to read from page 6 regarding whether a position was available.

THE COURT: And, Mr. Crocenzi, can we have the date of that correspondence for the record?

MR. CROCENZI: Sure.

1 (Brief pause.)

2 MS. SALTZ: The objection is still
3 foundation, Your Honor, in terms of showing the
4 witness first the statement and seeing if he in
5 fact made that statement.

6 THE COURT: I think that is what he's
7 intending to do.

8 MS. SALTZ: Before reading it to the jury.

9 THE COURT: Well, I agree. Let's find out
10 if he participated in the preparation of this
11 document either by providing information or
12 consulting with the attorneys, and so your
13 objection is sustained, Ms. Saltz --

14 MS. SALTZ: Thank you, Your Honor.

15 THE COURT: -- with respect to foundation,
16 but, Mr. Crocenzi, you can lay the foundation by
17 showing the witness this exhibit.

18 MR. CROCENZI: For the record the letter is
19 dated June 24th, 2008. Mr. Sheldon, I'm showing
20 you the letter I've been talking about dated
21 June 24th, 2008 from McNeese, Wallace & Nurick.
22 Can you take a minute to review that document,
23 and then I'm going to ask you some questions.

24 THE WITNESS: Okay.

25 (Brief pause.)

1 THE COURT: Mr. Crocenzi, could we identify
2 this as a plaintiff's exhibit? I know this was
3 not previously marked, is that correct?

4 MR. CROCENZI: That's correct.

5 THE COURT: All right, and you are at --

6 MR. CROCENZI: We had premarked seventeen,
7 correct.

8 THE COURT: All right. Let's identify this
9 as Plaintiff's Exhibit Number 18.

10 MR. CROCENZI: Thank you.

11 (Brief pause.)

12 THE COURT: Mr. Crocenzi, I believe the
13 witness has concluded his review.

14 MR. CROCENZI: Thank you, Your Honor.

15 BY MR. CROCENZI:

16 Q. Mr. Sheldon, did you -- after reviewing
17 that letter did you contribute any of the
18 information in that letter to your attorneys so
19 they could respond as part of the agency
20 proceedings?

21 A. Yes.

22 Q. Now, turning to page 6 of this letter, and
23 the third paragraph, can you read that paragraph
24 specifically for me now? To yourself.

25 A. Okay.

1 (Brief pause.)

2 Q. Did you contribute information to your
3 attorney so they could provide information to
4 the agency on that particular issue in that
5 paragraph?

6 A. The same as I've contributed all along,
7 yes.

8 Q. All right, and isn't it true that in this
9 letter your attorneys on behalf of Cumberland
10 Truck indicate that there were no vacant
11 positions at CTE during the time period for
12 which Mr. Shaw would qualify that he could
13 perform? And the time period of this letter is
14 February 26th, '07 to September 17th, '07.
15 would you like to look at it again?

16 A. That isn't any different than I've already
17 explained.

18 Q. Okay. So there were -- I think it is,
19 Mr. Sheldon. This letter says that there were
20 no vacant positions at CTE during this time
21 period, which is 2-26-07 to 9-17-07.

22 A. Okay.

23 Q. Is that your testimony today?

24 A. That there were no vacant positions?

25 Q. Yes.

1 **A.** There were no vacant warehouse positions,
2 which was with my discussion with Ricky was the
3 only job he was willing to accept.

4 **Q.** Okay. Well, again this letter says, "At no
5 point between 2-26-07 and 9-17-07 did Mr. Shaw
6 express any desire or willingness to work any
7 position other than his heavy duty warehouse
8 worker position. Regardless, there existed no
9 vacant position at CTE during this time period
10 for which Mr. Shaw was qualified that he could
11 perform."

12 **A.** That is correct.

13 **Q.** And that information is correct?

14 **A.** If he's only willing to do a warehouse
15 position work because of the size of his hands
16 or otherwise, then there isn't a position
17 available that he would be able to perform,
18 that's correct.

19 **Q.** But, Mr. Sheldon, isn't that different,
20 you're telling us that Ricky is the one that
21 took him out of the running for some kind of
22 duties, but this letter says regardless of
23 whether --

24 MS. SALTZ: Objection.

25 THE COURT: Hold on one second. Let him

1 finish the question and then you may object.

2 Q. Regardless of whether he could do the
3 warehouse job position, your company is
4 indicating that there were no vacant positions
5 at CTE that he was qualified to do.

6 MS. SALTZ: Objection. Argumentative, asked
7 and answered several times.

8 THE COURT: All right, I'll allow it one
9 more time. You may respond.

10 A. If Mr. Shaw is only willing to work the
11 position that he had previously, and he is not
12 qualified to do that position because of
13 mobility problems, then there would be no vacant
14 position for which he would be qualified.

15 Q. And is that testimony that you just gave in
16 this letter that we looked at together?

17 A. I'm not following.

18 Q. Your qualification, your explanation, is
19 that spelled out in this letter?

20 A. I didn't write the letter. I contributed
21 information to the letter. An attorney wrote
22 that letter on our behalf. How he chose to
23 choose his words I can't answer for the
24 attorney. I apologize, but I can't answer for
25 the attorney.

1 Q. Didn't Mr. Shaw give you a letter on
2 2-28-07 expressing his desire to continue
3 working at Cumberland Truck?

4 A. I don't know the dates of the letters, but
5 Mr. Shaw wrote several letters.

6 Q. I'm going to show you Plaintiff's Exhibit
7 11.

8 (Brief pause.)

9 Q. Have you had a chance to review that
10 letter?

11 A. I have.

12 Q. It's a letter from Ricky Shaw to Brenda
13 Hoffman dated 2-28-07, is that right?

14 A. That's correct.

15 Q. On page 2, first paragraph, do you see
16 where I'm at?

17 A. Page 2, first paragraph, yes, sir.

18 Q. You testified earlier that Ricky didn't
19 request any kind of accommodation.

20 A. Okay.

21 Q. And can you read the last two sentences of
22 that first paragraph on page 2? Read it out
23 loud for the jury, please.

24 A. "You can modify my job description as
25 warehouse receiver to fit what I really can do.

1 You can leave the situation as it is and has
2 been for a very long time."

3 MR. CROCENZI: That's all I have.

4 THE COURT: Ms. Saltz?

5 RECROSS BY MS. SALTZ:

6 Q. Yes, Your Honor. Looking at Plaintiff's
7 Exhibit 11, what's the date of the letter?

8 A. February 28th, 2007.

9 Q. And is that the same day that you met with
10 Mr. Shaw when he went back to work again?

11 A. It would very well be about the same time
12 period, yes. I don't know which day we met with
13 Mr. Shaw, but it was certainly in that time
14 frame.

15 Q. Did he bring this letter to you?

16 A. I believe he brought it to Brenda. He
17 didn't bring it directly to me, but I believe he
18 brought it to Brenda and that's where I received
19 it from, or saw it the first time.

20 Q. And the sentence that counsel had you read,
21 "You can modify my job description as warehouse
22 receiver to fit what I really do," is that what
23 you discussed with him in that meeting?

24 A. No. I actually was willing to discuss not
25 modifying the job description itself because his

1 job was what his job was, but actually modifying
2 his duties in order that he would be able to
3 perform them with accommodations. There's a big
4 difference to just modifying a job description
5 to try to make paperwork look good as opposed to
6 doing what in reality you have to do, and that
7 is make sure that your worker can do the job
8 that he's supposed to be doing.

9 MS. SALTZ: That's all I have, Your Honor.
10 Thank you.

11 REDIRECT BY MR. CROCENZI:

12 Q. A couple of follow-up, Your Honor, if you
13 can indulge me. Mr. Sheldon, isn't the
14 paperwork you talked about, Exhibit 9, the only
15 paperwork that you sent to Concentra Medical
16 Center as part of Ricky's evaluation?

17 A. Is the job analysis Exhibit 9?

18 Q. Yes.

19 A. This is unmarked, I apologize. Yes, the
20 only paperwork Ricky received to take to
21 Concentra was the job analysis form. Now, this
22 is the original job analysis as given to him
23 prior to any of these meetings.

24 Q. I understand that.

25 A. This is also the same job analysis that I

1 offered to allow him to modify with a group in
2 order that it would be conforming to his opinion
3 of what his job was.

4 Q. Okay, so I didn't quite understand your
5 testimony. You said that you were willing to
6 change his job, you were willing to change what
7 he did or his job duties, but you weren't
8 willing to change the paperwork. Is that what
9 you said?

10 A. No. What I said was by changing the
11 paperwork to make things look good doesn't
12 change the reality. The reality was he was
13 struggling to do the warehouse position.

14 Q. But, sir, isn't it true that Ricky was
15 asking you to change the paperwork to fit what
16 he actually did in the warehouse?

17 A. What he actually did in the warehouse is on
18 this paperwork.

19 MR. CROCENZI: Thank you. That's all I
20 have.

21 MS. SALTZ: I have no further questions.

22 THE COURT: All right, I have no questions.
23 You may step down, Mr. Sheldon. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Crocenzi, we should probably

1 have a motion for the admission of Exhibits 9,
2 I believe maybe 6 and 9?

3 MR. CROCENZI: Yes. We've been talking a
4 good bit about 9, and I think 6 was also one of
5 the exhibits Mr. Whitmire identified. So I'll
6 move for admission at this point for both of
7 those exhibits.

8 MS. SALTZ: I object to the admission of
9 Exhibit 9. I do not object to Exhibit 6. The
10 reason for Exhibit 9 is because it is a filled
11 out form that hasn't been, it's not -- and no
12 one has identified it. However, Defendant's D-1
13 is the job analysis without the handwriting on
14 it.

15 MR. CROCENZI: That's correct, Your Honor.

16 THE COURT: All right.

17 MS. SALTZ: So I would have no objection as
18 to the admission of D-1 for the purpose at this
19 point.

20 THE COURT: All right. Any objection to
21 Plaintiff's Exhibit 6?

22 MS. SALTZ: No.

23 THE COURT: All right. Plaintiff's Exhibit
24 6 is admitted. Defendant's Exhibit Number 1 is
25 also admitted, and we'll defer ruling on your

1 motion to admit Defendant's -- or Plaintiff's
2 Exhibit 9 pending I'm assuming the medical
3 information?

4 MR. CROCENZI: Dr. Walsh, right.

5 THE COURT: Very well. At this time it's
6 5:10, I think we should conclude today's
7 proceedings. Thank you, ladies and gentlemen,
8 for staying past our anticipated time of
9 conclusion. This happens on occasion and I
10 promise I'll let you go early on a day or two as
11 well to make it up to you. Please recall all of
12 my earlier instructions and refrain from any
13 independent research, any tweeting about what
14 you have seen and heard in today's proceedings.
15 Go home, get a good night's sleep, and come back
16 prepared to start tomorrow at 9:00 a.m., and
17 please drive safely home. Ms. McKinney, you may
18 escort the jury. We are in recess until 9:00
19 tomorrow morning. Counsel, please stay.

20 (Jury recessed at 5:11 p.m.)

21 THE COURT: Please be seated. This can be
22 off the record.

23 (Off the record.)

24 THE COURT: Very good. We'll see you
25 tomorrow morning at 9:00 a.m.

(Court adjourned at 5:12 p.m.)

1 Ricky A. Shaw vs. Cumberland Truck Equipment Co.

2 1:09-CV-00359

3 Jury Trial Proceedings, Day 1

4 16 May 2011

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6
7
8 I hereby certify that the proceedings
9 and evidence are contained fully and accurately
10 in the notes taken by me on the trial of the
11 above case, and that this copy is a correct
12 transcript of the same.

13
14
15 s/ Wesley J. Armstrong

16 -----

17 Wesley J. Armstrong

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24 any means unless under the direct control and/or
25 supervision of the certifying reporter.

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